



# California Regulatory Notice Register

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JULY 30, 2010

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. CALIFORNIA PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM**

**NOTICE OF PROPOSED  
REGULATORY ACTIONS**

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below after considering public comments, objections, or recommendations.

**I. PROPOSED REGULATORY ACTION**

In this filing, the Board proposes to amend Regulation 599.550 titled "Prefunding Plan for Health Care Coverage for Annuitants" in Title 2 of the California Code of Regulations. This proposed regulatory action pertains to changes in Stats. 2007, Ch. 318 (AB554) to allow eligible employers who are not participating in the Public Employees' Medical and Hospital Care Act (PEMHCA) to participate in the California Employers' Retiree Benefit Trust (CERBT).

**II. WRITTEN COMMENT PERIOD**

Any person may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on September 13, 2010. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via facsimile at (916) 795-4607; e-mail at [veronica\\_mora@calpers.ca.gov](mailto:veronica_mora@calpers.ca.gov); or mailed to the following address:

Veronica Mora, Regulations Coordinator  
California Public Employees' Retirement System  
400 Q Street, Room W2580  
P.O. Box 942702  
Sacramento, California 94229-2702

Telephone: (916) 795-0713

**III. AUTHORITY AND REFERENCE**

The Board has general authority to take regulatory action under Government Code Section 20121, and to implement the Annuitants' Health Care Coverage Fund described at Government Code Section 22940.

**IV. INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Government Code 22940 gives CalPERS the authority to administer the Annuitants' Health Care Coverage Fund, (defined in existing regulations as the Prefunding Plan and sometimes referred to as the California Employers' Retiree Benefit Trust fund, or CERBT for short) for the purpose of prefunding of employer retiree health benefits and other post employment benefits (OPEB).

Prior to January 1, 2008, only employers who participated in the health benefits program authorized by the Public Employees' Medical and Hospital Care Act (PEMHCA), administered by CalPERS, were eligible to participate in the CERBT. Effective January 1, 2008, Stats. 2007, Ch. 318 (AB544), expanded the definition of "employer" to allow non-PEMHCA employers who contract for defined health benefits for their employees to participate in the CERBT.

The proposed amendments to the regulations expand the definition of employer to reflect the statutory change and thereby allow qualified California public agency employers to contract with CalPERS to prefund OPEB through the CERBT fund.

The proposed amendments also indicate that the Prefunding Plan is sometimes referred to as the California Employers' Retiree Benefit Trust or CERBT.

**V. EFFECT ON SMALL BUSINESS**

The proposed regulatory action does not affect small business because it neither imposes requirements on nor mandates participation or other action by business. Rather, the action expands the definition of employer to allow greater participation by qualified California public agency employers for the purpose of prefunding OPEB.

**VI. DISCLOSURES REGARDING THE  
PROPOSED REGULATORY ACTION**

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose a mandate on local agencies or school districts.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action does not impact costs or savings for any state agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code Section 17500 et seq.
- D. **NON-DISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action does not impact any federal funding to the state.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses including the ability of business of California to compete with business in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS:** The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. **IMPACT ON JOBS AND BUSINESS WITHIN CALIFORNIA:** The proposed regulatory action will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no significant effect on housing costs.

**VII. CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board

would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

**VIII. CONTACT PERSONS**

Please direct inquiries concerning the substance of the proposed regulatory action to:

John Swedensky  
Constituent Relations Office  
California Public Employees' Retirement System  
P.O. Box 942709  
Sacramento, California 94229-2709

Telephone: (916) 795-0835  
Fax: (916) 795-0032  
E-mail: [john\\_swedensky@calpers.ca.gov](mailto:john_swedensky@calpers.ca.gov)

Please direct requests concerning processing of this regulatory action to:

Veronica Mora  
Regulations Coordinator  
400 Q Street, Room W2580  
P.O. Box 942702  
Sacramento, California 94229-2702

[veronica\\_mora@calpers.ca.gov](mailto:veronica_mora@calpers.ca.gov)  
Telephone: (916) 795-0713

**IX. AVAILABILITY OF STATEMENT  
OF REASONS AND TEXT OF  
PROPOSED REGULATIONS**

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Mora, Regulation Coordinator, at the address shown in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS web site at [www.calpers.ca.gov](http://www.calpers.ca.gov) under Members, About CalPERS, Proposed Regulatory Actions.



## X. PUBLIC HEARING

The Board has not scheduled a hearing, however, any interested person, or his or her duly authorized representative, may request a public hearing pursuant to Government Code Section 11346.8. The request must be in writing and must be submitted to the Regulations Coordinator, at the address shown above, no later than 15 days prior to the close of the written comment period.

## XI. ACCESS TO HEARING ROOM

If a hearing is scheduled, the hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

## XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendations of any interested person, modify the proposed text of the regulations after the written comment period has closed. It may amend Regulation 599.550 as modified if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

### CONFLICT-OF-INTEREST CODES

#### ADOPTION

MULTI-COUNTY: San Joaquin Valley Insurance Authority

## AMENDMENT

MULTI-COUNTY: M-S-R Public Power Agency  
River Delta Unified School District

A written comment period has been established commencing on **July 30, 2010**, and closing on **September 13, 2010**. Written comments should be directed to the Fair Political Practices Commission, Attention **Cynthia Fisher**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **September 13, 2010**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code(s) and approve it as revised, or return the proposed code(s) for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Cynthia Fisher, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Cynthia Fisher**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

#### Notice of Proposed Rulemaking

The Department of Food and Agriculture adopted Sections 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7 and 3701.8 of the regulations in Title 3 of the California Code of Regulations pertaining to the Citrus Nursery Stock Pest Cleanliness Program as an emergency action that was effective on May 17, 2010. The Department is amending the regulations and proposes to continue the regulations as amended and to complete the adoption process by submission of a Certificate of Compliance no later than November 13, 2010.

The Department of Food and Agriculture repealed Sections 3000, 3001, 3002, 3003 and 3004 of the regu-

lations in Title 3 of the California Code of Regulations pertaining to the Registration and Certification of Citrus Nursery Stock as an emergency action that was effective on May 17, 2010. The Department proposes to complete the repeal process by submission of a Certificate of Compliance no later than November 13, 2010.

The Department of Food and Agriculture amended Sections 3407 of the regulations in Title 3 of the California Code of Regulations pertaining to the Citrus Tristeza Virus Interior Quarantine as an emergency action that was effective on May 17, 2010. The Department is amending the regulation and proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than November 13, 2010.

#### PUBLIC HEARING

The Department will hold two public hearings. The first will begin at 1:00 p.m., on September 15, 2010 in the auditorium of the Tulare County Agricultural Center at 4437 Laspina Street, Tulare California. The second will begin at 1:00 p.m. on September 17, 2010 in the Rummonds Training Room of the Coachella Water Irrigation District at 85-995 Avenue 52, Coachella, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [smccarthy@cdfa.ca.gov](mailto:smccarthy@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on September 13, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Susan McCarthy  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street, Room 210  
Sacramento, California 95814

#### AUTHORITY AND REFERENCE

Food and Agricultural Code sections 407 and 6946 authorize the Department to adopt these regulations. The regulations implement, interpret and make specific



sections 6940, 6941, 6942, 6943, 6944, 6945 and 6946 of the Food and Agricultural Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

FAC Sections 6940, 6941, 6942, 6943, 6944, 6945 and 6946 provide that the Department is obligated to develop and establish a mandatory Citrus Nursery Stock Pest Cleanliness Program to protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats and that the program shall be administered by the Secretary. The effect of the adoption of Sections 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7 and 3701.8 will be to establish a mandatory Citrus Nursery Stock Pest Cleanliness program for citrus nursery stock propagative sources that will include participant and administrative responsibilities, eligibility and planting location and maintenance requirements, a performance standard for insect-resistant structures, disease-testing and inspection schedules, grounds for refusal, suspension, cancellation and/or destruction of registered trees, elements of a required application form and a fee schedule for participation and testing.

FAC Sections 582, 5822 and 5823 provide for a voluntary citrus nursery stock registration and certification program. The effect of the repeal of Sections 3000, 3001, 3002, 3003, 3004, 3005 and 3006, Registration and Certification of Citrus Trees, will be to delete the provisions for a voluntary citrus nursery stock registration and certification program.

FAC Sections 5301, 5302 and 5322 provide for a mandatory citrus tristeza virus interior quarantine. The effect of the amendment of Section 3407, Citrus Tristeza Virus Interior Quarantine will be to exempt certain propagative materials from the requirements for a moving permit and to allow citrus nursery stock meeting certain propagative and recordkeeping requirements to be moved within the State under the conditions of a moving permit.

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.  
Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: None.

The Department of Food and Agriculture has made an initial determination that the adoption of Sections 3701, et seq., the repeal of Sections 3000, et seq., and the amendment of Section 3407 may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department of Food and Agriculture has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses which are expected to be affected by this regulation are those that produce citrus nursery source propagative material.

### Description of Projected Reporting, Recordkeeping and other Compliance Requirements

These businesses will be required to maintain the following records:

For all vegetative propagative material produced from scion mother, seed and/or increase trees: date harvested, disposition of such material including location in the nursery or name and address of customer as applicable, Department tag number, tag number of registered scion mother or seed tree, or Citrus Clonal Protection Program number (as applicable), number and kinds of units of propagative material and plant type and variety.

These businesses will be required to develop and adhere to a compliance agreement for managing their insect-resistant structures and ensure that their trees meet the planting location, maintenance and testing requirements of the Citrus Nursery Stock Pest Cleanliness Program. Affected businesses are required to complete and submit annual application forms, report to the Department anytime they discover a breach in an insect-resistant structure (by FAX, phone or email) and pay all fees associated with participating in the program.

Cost impacts on a representative private person or business:

The estimated cost impact of the adopted regulation that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations may be significant. The Department has identified 61 nurseries that currently participate in the citrus registration program. These busi-

nesses must comply with all of the disease-testing and inspection requirements in the Citrus Nursery Stock Pest Cleanliness Program, including the requirement to maintain all scion mother, rootstock and increase trees in insect-resistant structures. The Department estimates that a representative nursery will be subject to the following costs:

- \$200 annual application fee for trees
- Testing fees of \$25–35/scion mother or seed tree, depending on the number tested and \$4/increase tree
- Plus additional fees to cover laboratory costs
- Annual program fee of \$300 for all structures at one location, plus \$.01/ft<sup>2</sup>
- \$3.48 to \$5.63/ft<sup>2</sup> to construct a new budwood house
- \$12.79/ft<sup>2</sup> to construct a new propagation house
- \$1.93/ft<sup>2</sup> to \$6.07/ft<sup>2</sup> to renovate an existing structure

Since citrus nurseries vary so widely in size and propagative types of trees produced and maintained, it was not possible to develop an average cost/business. In adopting these regulations, the Department is putting in place a performance standard for insect-resistant structures, rather than a prescriptive standard to provide flexibility and the potential for cost-savings to the affected industry.

These regulatory actions will not:

- (1) create or eliminate jobs within California;
- (2) create new business or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: none.

Small Business Determination

The Department has determined that the proposed regulations affect small business.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Since SB 140 compels the Department to develop a mandatory citrus nursery stock pest cleanliness program, the “no action” alternative is not an alternative in

this case. Additionally, the only alternative method to insect-resistant structures that would provide some protection to citrus nursery stock from disease vectors would be the continuous application of pesticides. In addition to potential environmental impacts, this would not meet federal or state quarantine standards.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## CONTACT

Inquiries concerning the proposed administrative action may be directed to:

Susan McCarthy  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street, Room 210  
Sacramento, California 95814  
916.654.1017  
FAX 916.654.1018  
[smccarthy@cdfa.ca.gov](mailto:smccarthy@cdfa.ca.gov)

The backup contact person for these inquiries is:

Stephen Brown  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street, Room 210  
Sacramento, California 95814  
916.654.1017  
FAX 916.654.1018  
[sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov)

Please direct request for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. McCarthy at the above address.

## INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its website ([www.cdfa.ca.gov/cdfa/pendingregs](http://www.cdfa.ca.gov/cdfa/pendingregs)).

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department of Food and Agriculture will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file con-

sists of this notice, the initial statement of reasons for the proposed action and the express terms of the proposed action. Copies may be obtained by contacting Susan McCarthy at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearings and considering all timely and relevant comments received, the Department may adopt, repeal and/or amend the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send request for copies of any modified regulations to the attention of Susan McCarthy at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be posted on the Department's web site or a copy may be obtained by contacting Ms. McCarthy at the above address.

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

#### ARTICLE 6.5 DIRECT MARKETING (Notice published July 30, 2010)

#### NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend, Title 3, Article 6.5 of the California Code of Regulations (CCR) Sections 1392; 1392.1(a), (d), (e), (f), (g) and (h); 1392.2(a), (b), (e), (g), (h)(1), (2), (3), (j), and (s); 1392.4(a), (b), and (d); 1392.6(b), (f) and (g); 1392.8.1(h); 1392.9(a), (1), (2), (3), (4), (5), (6), and (7); 1392.9(b), (1). The Department also proposes to add the following subsections: 1392.1(h); 1392.2(u), (v), (w), (x), (y), (z); 1392.4(k), (l), and (m); 1392.4.1; and 1392.9(a)(7), (e); and 1392.11(e).

The Department has not scheduled a public hearing on this proposed action. However, the Department will

hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on September 13, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Steve Patton, Compliance Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street  
Sacramento, CA 95814

#### AUTHORITY AND REFERENCE

Notice is hereby given that the California Department of Food and Agriculture, pursuant to the authority vested by Sections 14, 401, 407, 42681, 42682, 42684, 47000, 47001, 47002, 47003, 47004, 47004.1, 47005, 47011, 47020, 47021, 47022, 58101, 58101.5, 58103, and 58104 of the Food and Agricultural Code (FAC), and to implement, interpret, or make specific Sections 821, 861, 42651, 42681, 42941, 43003, 47000, 47001, 47002, 47003, 47004, 47004.1, 47005, 47011, 47021, 47022, 47025, 58101, 58101.5, 58102, 58103 and 58104 of the FAC, proposes to amend regulations in Title 3 of the California Code of Regulations (3 CCR).

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1392 expresses the intent of Article 6.5 Direct Marketing regulations. The specific purpose of amending Section 1392 is to further clarify the intent of the article.

Section 1392.1(a) defines what may be sold and to whom the producer may sell. Amending this section will expand to whom the producer may sell as recently updated in FAC Section 47002.

Section 1392.1(d) gives exemptions to a producer selling to specific entities. The specific purpose of amending this section is to allow those same exemptions to entities that will be re-selling or distributing fresh fruits, nuts and vegetables to an end user at specific locations. This also updates language recently changed in FAC Section 47002.

Section 1392.1(e) is a new sub-section that regulates producers selling to wholesalers.

Section 1392.1(f) was previously sub-section (e).

Section 1392.1(g) was previously sub-section (f). Amendments to this sub-section expand the locations to include a retail stand or farm stand where producers must comply with regulations pertaining to quality and maturity.

Section 1392.1(h) was previously sub-section (g).

Section 1392.2(a) further defines the term "Certified Farmers' Market." It states who may operate a farmers' market. Amending this section adds the word "only" which clarifies that the options listed are not examples, but the specific entities that may operate the market. The definition to whom a producer may sell is also changed to include those that will sell or distribute to end users.

Section 1392.2(b) defines and specifies conditions for valid Certified Farmers' Market certificates. This definition includes to whom a producer may sell. This definition is expanded to include those that will sell or distribute to an end user. The amendment also makes clear that the operator is liable and responsible for the market operation and regulatory compliance as a condition of being issued a certificate.

Section 1392.2(e) defines a certified producer and to whom they may sell. The amendment allows the producer to sell to those that will resell or distribute the products to end users as recently updated in FAC Section 47002.

Section 1392.2(g) defines a consumer. The specific purpose of the amendment is to clarify the term.

Section 1392.2(h)(1), (2), and (3) defines where a producer may sell their products and to whom they may sell. Amending this section will expand both where and to whom they may sell.

Section 1392.2(j) defines the term "employee." The amendment further clarifies that definition.

Section 1392.2(s) defines a partnership and includes to whom that partnership may sell. This amendment changes the definition to include selling to those that will be reselling or distributing to end users.

Existing Section 1392.2 establishes definitions governing the construction of the language in this article. The specific purpose of adopting Section 1392.2(u), (v), (w), (x) and (y) is to add definitions of processed agricultural products, and the preservatives, seasonings, flavorings, and food coloring allowed in those products. These definitions will make clarifications to enhance the uniformity of products sold at the markets.

Adopting Section 1392.2(z) will give a definition to the term "at or near the point of production." This term is used as a regulated location in several sections.

Section 1392.4(a) establishes conditions of direct marketing. It details who may sell, where they may sell, and to whom they may sell. Amending this section expands where, and to whom producers may sell.

Section 1392.4(b) declares additional state laws must be followed when products are sold at a certified farmers' market or at or near the point of production. This amendment expands those locations to include retail stands and farm stands.

Existing Section 1392.4(d) requires an embossed photocopy of the certified producer's certificate to accompany the products during transportation and at the point of sale. The specific purpose of amending Section 1392.4(d) is to add the word "valid" to the requirement that the embossed certificate be present during transportation and at point of sale. This will ensure expired certificates cannot be used to comply with this section.

The specific purpose of adopting Section 1392.4(k) is to allow producers exemptions when selling their agricultural products to consumers or those that will be reselling or distributing to end users. It requires producers to issue a memorandum and outlines what that memorandum must contain.

The specific purpose of adopting Section 1392.4(l) is to further clarify when the producer must issue a memorandum. Incorporates recent changes made to FAC Section 861.

The specific purpose of adopting Section 1392.4(m) is to require the seller of processed products to document compliance with production requirements referenced in section 1392.2(k) and to have that documentation available at the point of sale. It would restrict the quantities of the processed products to be less than the amount of fresh commodities listed on the certificate. It would require that the included ingredients not of their own production (other than sugar and water) must be the last ingredients listed on the label required by the Food and Drug Administration.

Adopting Section 1392.4.1 is to define the meaning of a "minor," "moderate," and "serious" violation; state the level of severity; specify the type of violation of associated sections of the FAC; and give a penalty range violation.

Section 1392.6 lists the certification requirements of a certified farmers' market. The specific purpose of amending Section 1392.6(b) is to require that a map identifying the non-certified and/or non-agricultural product areas of the certified farmers' market be included in the operator application.

Section 1392.6(f) contains a clause that market rules and regulations must be enforced in a fair and equitable manner. Amending this section clarifies that the rules shall contain this clause.

Amending Section 1392.6(g) will stipulate that the market operator shall provide due process to market participants prior to the imposition of a fine, and further outlines the due process requirements. It also updates information on the Department of Food and Agriculture.



Section 1392.8.1 outlines what the certified farmers' markets are required to remit to the Department each quarter. The amendment to 1392.8.1(h) expands and clarifies this list.

Section 1392.9 lists the compliance requirements for the certified farmers' market operator. Amending Section 1392.9(a)(1), (3), (4), (5), and (6) makes non-technical grammatical changes and adopting (7) requires market managers to ensure compliance with subsections (k) and (l) of Section 1392.4.

The purpose of amending Section 1392.9(b)(1) is to require the operator of certified farmers' markets to keep records of processed products as they currently do for fresh products.

Creating Section 1392.9(e) will require market operators to provide participants the right to appeal consistent with Section 1392.6(g).

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing businesses within California; or
3. Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

#### EFFECT ON SMALL BUSINESS

The Department has determined that the proposed changes to the regulations would result in no added

costs to small businesses affected by these proposed changes. The proposed changes allow the certified producers increased flexibility in marketing their commodities and will increase the variety of products offered for sale at certified farmers' markets.

#### CONSIDERATION OF ALTERNATIVES

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Steve Patton, Compliance Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Susan Shelton, Supervising Special Investigator  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 445-2180; Fax: (916) 445-2427

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Shelton at the above address.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 220, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and minutes to various Certified Farmers' Market Advisory Committee meetings. Copies may be obtained by contacting Ms. Shelton at the address or phone number listed on the previous page.

AVAILABILITY OF CHANGED  
OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Shelton at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT  
OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shelton at the address listed on the previous page.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at:

<http://www.cdfa.ca.gov/is/Regulations.html>

**TITLE 4. CALIFORNIA HORSE  
RACING BOARD**

TITLE 4, DIVISION 4, CALIFORNIA CODE  
OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND  
RULE 1844. AUTHORIZED MEDICATION

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1844. Authorized Medication. The proposed amendment would increase the amount of procaine that may be present in an official urine test sample from 10 nanograms per milliliter to 50

nanograms per milliliter. The proposed amendment also adds a new subsection 1844(h), which states procaine, following administration of procaine penicillin, is an authorized medication. There may be no more than 25 nanograms per milliliter in the official blood test sample, provided the procaine penicillin administration was reported pursuant to Rule 1842, Veterinarian Report. In addition, the procaine penicillin can not have been administered after entry to race, and the horse has to have been under surveillance for a minimum of six hours prior to racing. The horse owner shall be responsible for all costs associated with testing for procaine and for surveillance.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, September 16, 2010**, or as soon after that as business before the Board will permit, at the **Los Angeles County Fair, Fairplex Park, 1101 West McKinley Avenue, Pomona, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on September 13, 2010**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone (916) 263-6397  
Fax: (916) 263-6022  
E-Mail: [haroldc@chrb.ca.gov](mailto:haroldc@chrb.ca.gov)

AUTHORITY AND REFERENCE

Authority cited: Sections 19440 and 19562, Business and Professions Code. Reference: Sections 19580 and 19581, Business and Professions Code.

Business and Professions Code sections 19440 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19580 and 19581, Business and Professions Code.



INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in the State. Business and Professions Code section 19581 provides that no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof.

The Board proposes to amend Rule 1844 to modify the permitted levels for procaine from procaine penicillin. Procaine penicillin is one of the most effective antibiotics for the treatment of equine infections, but its use creates an ongoing problem for those treating the horse because the procaine in the penicillin sometimes shows up as a positive in post-racing drug testing — and there is no way for the tests to distinguish between procaine residue from penicillin and procaine illegally administered as a pain blocker. In other words, if procaine penicillin is administered to a horse, the procaine and the penicillin will show in the official urine test sample, and there is no way to determine if the procaine was administered as “procaine” or as “procaine penicillin.” Procaine as a local anesthetic is better known as Novocain. To comply with the Board’s medication regulations, the administration of procaine penicillin must be stopped far enough in advance of a race to allow time for the procaine to clear the horse’s system to a permitted level.

Under the proposed amendment to Rule 1844, subsection 1844(e)(7) has been modified to increase the allowed administrative level of procaine permitted in the post-race official urine test sample from 10 nanograms per milliliter to 50 nanograms per milliliter. A new subsection 1844(h)(1) also allows procaine in the official blood test sample at a level not to exceed 25 nanograms per milliliter. A new subsection 1844(h) provides that procaine, following the administration of procaine penicillin, is authorized under specified conditions. The conditions are listed in subsections 1844(h)(1) through

1844(h)(4). Subsection 1844(h)(1) sets the level for procaine or its analogs in the official blood test sample. Although subsection 1844(e)(7) has been changed to allow 50 nanograms per milliliter of procaine in the official urine test sample, it is difficult to determine when the procaine was administered, as the drug may be expelled from horses’ systems at different rates. Levels of procaine can be regulated more effectively through blood samples, and its administration can be identified within a certain time frame. This means levels identified in serum or plasma are more rigorous and defensible. If excessive levels of procaine are found in the official urine test sample, the official blood test sample can establish if the drug was administered within the guidelines of the Board’s rules. A new subsection 1844(h)(2) requires that the procaine administration is reported pursuant to Rule 1842, Veterinarian Report. This means the veterinarian who treats the horse within the inclosure must report in writing to the official veterinarian the name of the horse treated; the name of the trainer of the horse and the time of treatment. Subsection 1844(h)(3) states procaine penicillin may not be administered to a horse after entry to race, which is consistent with the Board’s medication regulations. Subsection 1844(h)(4) requires the horse to be under surveillance for a minimum of six hours prior to racing. The local anesthetic effect of procaine is no longer present beyond three hours after administration. Six-hour surveillance would eliminate any chance of improper use of procaine. A new subsection 1844(i) requires that the owner pay all expenses related to surveillance and testing for procaine under subsection 1844(h). This ensures the racing association and the Board are not burdened with the expense of surveillance for horses that have been administered procaine. Currently, the Board routinely tests for procaine, but if additional testing becomes necessary, subsection 1844(h) will allow the Board to require the owner to pay for such testing.

DISCLOSURE REGARDING THE  
PROPOSED ACTION

Mandate on local agencies and school districts: none.  
Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1844 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1844 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1844 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

### CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 263-6397  
E-mail: [haroldc@chrb.ca.gov](mailto:haroldc@chrb.ca.gov)

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst  
Telephone: (916) 263-6033  
E-mail: [andreao@chrb.ca.gov](mailto:andreao@chrb.ca.gov)

### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

### AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

### AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

### BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

## TITLE 5. STATE BOARD OF EDUCATION

### NOTICE OF PROPOSED RULEMAKING

#### AMENDMENTS TO THE CALIFORNIA CODE OF REGULATIONS, TITLE 5 REGARDING IMPLEMENTATION OF THE OPEN ENROLLMENT ACT

[Notice Published July 30, 2010]

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at **1:00 p.m. on September 14, 2010**, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Thacker, Regulations Coordinator  
LEGAL DIVISION  
California Department of Education  
1430 N Street, Room 5319  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to [regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov).

Comments must be received by the Regulations Coordinator by **5:00 p.m. on September 14, 2010**. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this

regulation, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

#### AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Sections 48350, 48351, 48352, 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48360 and 48361, Education Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Open Enrollment Act, SBX5 4 (Romero), was signed into law on January 7, 2010, and became effective on April 14, 2010. The Open Enrollment Act provides students enrolled in one of the 1,000 "low-achieving" schools, hereinafter referred to as "Open Enrollment" schools, the option to enroll in a different school with a higher Academic Performance Index than the pupil's school of residence.

Important requirements established by the Open Enrollment Act include:

- The State Superintendent of Public Instruction (SSPI) must create a list of 1,000 Open Enrollment schools based on a methodology that meets the criteria specified in Education Code section 48352(a)(1).
- The specifications set forth in Education Code section 48352(a)(1) include:
  - No more than ten percent of the schools in any local educational agency (LEA) may be on the list of 1,000 Open Enrollment Schools.
  - Court schools, community schools, community day schools, and charter schools are excluded from the list.
- Pursuant to Education Code section 48356(a), school districts may adopt standards for acceptance or rejection of applications under the Open Enrollment Act, and in particular those standards may include a definition of the capacity of the school or program to accept students under the Open Enrollment Act.
- Pursuant to Education Code section 48356(d)(3), when the number of applications to a school or program exceeds capacity, the district must conduct a lottery to select students for admission.

The regulations that are proposed to implement the Open Enrollment Act include:

- A methodology for selecting the 1,000 Open Enrollment schools.

- Procedures for allowing a parent to submit an application to a different school if the school that his or her child will attend in the subsequent school year is on the list of 1,000 Open Enrollment schools.
- A provision stating that a student shall not be required to reapply for enrollment in a school to which the student has been admitted under the Open Enrollment Act, regardless of whether the student's "school of residence" remains on the list of 1,000 Open Enrollment schools.
- Miscellaneous provisions regarding the timing of the application process and the notifications to be made during the application process.

#### DISCLOSURES REGARDING THE PROPOSED REGULATION

*The SBE has made the following initial determinations:*

Mandate on local agencies or school districts: None

Cost or savings to state agencies: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed regulations would not have a significant adverse economic impact on any business because they relate only to schools and school districts and not to small business practices.

#### CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered, or that has otherwise been identified

and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action. The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the content of this regulation may be directed to:

Carolyn Mills, Education Programs Consultant  
Learning Support and Partnerships Division  
California Department of Education  
1430 N Street, Room 6408  
Sacramento, CA 95814  
Telephone: 916-445-7746

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an initial statement of reasons for the proposed regulations and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr>.

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the final statement of reasons, once it has been finalized, by making a written request to the Regulations Coordinator.



REASONABLE ACCOMMODATION FOR ANY  
INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Carolyn Mills, Learning Support and Partnerships Division, 1430 N Street, suite 6408, Sacramento, CA, 95814; telephone, 916-445-7746. It is recommended that assistance be requested at least two weeks prior to the hearing.

**TITLE 8. OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

NOTICE OF PUBLIC MEETING/PUBLIC  
HEARING/BUSINESS MEETING OF THE  
OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD AND NOTICE OF  
PROPOSED CHANGES TO TITLE 8 OF THE  
CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **September 16, 2010**, at 10:00 a.m.  
in Room 310 of the County  
Administration Center,  
1600 Pacific Highway, San  
Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **September 16, 2010**, following the Public Meeting,  
in Room 310 of the County  
Administration Center,  
1600 Pacific Highway, San  
Diego, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS  
MEETING:

On **September 16, 2010**, following the Public Hearing,  
in Room 310 of the County  
Administration Center,  
1600 Pacific Highway, San  
Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS  
BY THE OCCUPATIONAL SAFETY AND  
HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, High-Voltage Electrical Safety Orders and General Industry Safety Orders, as indicated below, at its Public Hearing on **September 16, 2010**.

1. **TITLE 8: HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5,  
Article 17  
Section 2813  
**Underground Vaults—Headroom Clearance**

Descriptions of the proposed changes are as follows:

1. **TITLE 8: HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 5,  
Article 17  
Section 2813  
**Underground Vaults—Headroom Clearance**

## INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This staff-initiated rulemaking proposal is the result of an e-mail from Mr. Julian Ajello of the California Public Utilities Commission who forwarded an inquiry from the City of Palo Alto regarding a discrepancy between Title 8, Section 2813 and the California Public Utilities Code (PUC) pertaining to the minimum height requirement inside a manhole. Existing Section 2813 refers the reader to underground vault dimensions stipulated by the PUC which is incorporated by reference.

The PUC requires a floor to ceiling height of not less than 5 feet for underground electrical facilities. Section 2813 directs compliance with the PUC dimensions, yet specifies a headroom clearance of not less than 6 1/2 feet. This conflict in headroom clearance dimensions causes confusion and limits or challenges regulatory compliance.

Federal OSHA's height requirements for workspace about electrical equipment under 29 Code of Federal Regulations (CFR) Section 1910.303(h)(3) is 6 1/2 feet. Labor Code Section 142.3(a)(2) mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues. The proposed amendments will align Section 2813 to be consistent with the federal standard with regard to the headroom clearance issue.

### **Section 2813. Underground Vaults.**

Existing Section 2813 provides the general requirements relating to the minimum size of any manhole, subway, chamber, or underground room containing any electrical wiring or equipment and outside access opening.

This rulemaking action proposes amending the first paragraph of Section 2813 which references Sections 8051 through 8057 of the PUC regarding underground

room dimensions. The proposal directs the reader to follow the existing subsections (a) and (b) instructions for inside vault measurements and access opening dimensions. Also, this proposal deletes the last sentence of the first paragraph to clarify that the dimensions specified in subsections (a) and (b) differ from and are not extracted from the PUC statutes.

This proposal will eliminate the discrepancy of the minimum height requirements between existing Section 2813 and the PUC and will also provide consistent state and federal minimum height requirements for underground manholes. This proposal will have no effect upon the regulated public other than to provide consistency with federal standards.

It is proposed that the no-longer-required parenthetical reference to Title 24, Part 3, Section 3-110-37 also be deleted. The Board makes on-going efforts to eliminate these needless Title 24 cross-references. This deletion is without regulatory effect.

## COST ESTIMATES OF PROPOSED ACTION

### **Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

### **Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

### **Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

### **Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

### **Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.



## DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standard.

## EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

## ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

## REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been

identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than September 10, 2010. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on September 16, 2010, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board’s rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board’s notice and other materials associated with this proposal on the Standards Board’s homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is pre-

pared, it may be obtained by accessing the Board's web-site or by calling the telephone number listed above.

## TITLE 10. DEPARTMENT OF INSURANCE

### NOTICE OF PROPOSED ACTION

**DATE: July 30, 2010**

**REGULATION FILE:  
REG-2010-00008**

#### SUBJECT OF PROPOSED RULEMAKING

The California Department of Insurance ("CDI") proposes to amend and adopt the regulations described below, after considering comments from the public.

1) Title 10, Chapter 5, Subchapter 2, Article 1, "Document Submission and Approval Procedures; Fees." The CDI is considering amendments to 10 California Code of Regulations sections 2201, 2205, 2206, 2207, 2216, 2217 and 2218.10 to require that all forms filed with the Policy Approval Bureau and Actuarial Office be filed electronically through the System for Electronic Rate and Form Filing (SERFF) of the National Association of Insurance Commissioners (NAIC) for life, health, disability income, long-term care, variable annuity, and other form filings, eliminate provisions pertaining to paper filing, clarify nomenclature regarding actions on submissions, and to use gender-neutral language.

The amendment to the existing regulation(s), and any necessary additional regulation, would be added to existing regulations based on the authority set forth in Insurance Code sections 742.43, 779.21, 10191, 10195.1, 10234, 10327, 10506, 10704 and 12973.9, and the references set forth in Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10168.93, 10192.14, 10192.15, 10192.19, 10205, 10225, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658 and 12250.

2) Title 10, Chapter 5, Subchapter 3, Article 1.5, Corporate Affairs Bureau — Electronic Filing. The CDI is considering adopting regulations to require that all applications, registrations, notices, reports, or other material that are submitted to the CDI's Corporate Affairs Bureau be submitted by means of the CDI's Online Assistance System for Insurer Submittals ("OASIS") pursuant to Insurance Code sections 720, 1215.8, 12921(c), 1652, 10113.2, 11520.5, 11694.5, 12161,

12389(a)(3) Insurance Code; *CalFarm Insurance Company v. Deukemjian* (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Insurance Company v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216, or by means of the National Association of Insurance Commissioner's ("NAIC") online UCAA system, as appropriate.

The proposed regulations are intended to reduce the use of paper in transactions between filers and the CDI and thereby improve the efficiency of the CDI's operations. They are also intended to enable personnel to access files from different locations without the cost and delay of transporting paper files, speed communication between filers and the CDI, provide for improved searching and faster retrieval of materials for public inspection, provide for improved file storage security through secure electronic storage of files with backup, improve file data integrity by permitting file access without removal or transport of the original file material from its storage location, and improve CDI's ability to aggregate file data as required for internal operations and for reporting of data to federal agencies.

#### PUBLIC HEARING — DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

**Date and Time** **Wednesday, September 15, 2010**  
**11:00 a.m.**

**Location** **Department of Insurance**  
**45 Fremont Street, 22<sup>nd</sup> Floor**  
**Hearing Room**  
**San Francisco, CA 94105**

#### PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on September 15, 2010**. Please direct all written comments to the following contact person:

Jack K. Hom  
Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, California 94105

(415) 538-4129  
(415) 904-5896 (facsimile)  
[homj@insurance.ca.gov](mailto:homj@insurance.ca.gov)

Questions regarding procedure, comments, or the substance of the proposed regulations should be ad-

dressed to the contact person listed above. In the event that contact person is unavailable, inquiries regarding the proposed action may be directed to the backup contact person:

Bruce Hinze  
Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24<sup>th</sup> Floor  
San Francisco, California 94105

(415) 538-4392  
(415) 904-5896 (facsimile)  
[hinzeb@insurance.ca.gov](mailto:hinzeb@insurance.ca.gov)

#### DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, addressed to the contact person at the address listed above, **no later than 5:00 p.m. on September 15, 2010**. Any written materials received after that time will not be considered.

#### COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

Written comments transmitted by e-mail will be accepted only if they are sent to the following e-mail address: [homj@insurance.ca.gov](mailto:homj@insurance.ca.gov). The Commissioner will also accept written comments submitted by facsimile only if they are sent to the attention of the contact person at the following **facsimile number: (415) 904-5896**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. **Comments sent by e-mail or facsimile are subject to the 5:00 p.m., September 15, 2010 deadline.**

#### AUTHORITY AND REFERENCE

The proposed amendments to Title 10, Chapter 5, Subchapter 2, Article 1. "Document Submission and Approval Procedures; Fees" will implement, interpret, and make specific the provisions of Insurance Code sections 742.43, 779.21, 10191, 10195.1, 10234, 10327, 10506, 10704 and 12973.9, and the references set forth in Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10168.93, 10192.14, 10192.15, 10192.19, 10205, 10225, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658 and 12250.

The proposed adoption of new regulations, Title 10, Chapter 5, Subchapter 3, Article 1.5, "Corporate Affairs Bureau — Electronic Filing", will implement, interpret and make specific the provisions of Insurance Code sections 720, 1215.8, 12921(c), 1652, 10113.2, 11520.5, 11694.5, 12161, 12389(a)(3); *CalFarm Insurance Company v. Deukemjian* (1989) 48 Cal.3d 805; *20<sup>th</sup> Century Insurance Company v. Garamendi* (1994) 8 Cal.4<sup>th</sup> 216 and references sections 131, *et seq.*, 717, *et seq.*, 810, 827, 880, *et seq.*, 922.4, 922.5, 1011(c), 1104.9, 1215, *et seq.*, 1652, 1765, 10113.2, 11520, *et seq.*, 11691, *et seq.*, 12160, *et seq.*, 12250, *et seq.*, 12389, *et seq.*

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

One of the main goals in the CDI's Strategic Plan for 2010 is to improve department operations and reduce waste of State resources by eliminating a large volume of paper-based transactions. To that end, the CDI has begun the process to change internal processes to convert incoming paper transactions to electronic format. These regulations are part of that process.

Proposed amendments to Title 10, Chapter 5, Subchapter 2, Article 1. "Document Submission and Approval Procedures; Fees":

Existing law, Insurance Code section 10191 provides that the Insurance Commissioner ("Commissioner") may promulgate regulations as are necessary or advisable to establish a procedure for the filing and approval of documents. Insurance Code section 10327 provides that the Commissioner may make reasonable rules and regulations concerning the procedures for the filing or submission of policies. Further, the Insurance Code also provides that the Commissioner may, more generally, promulgate regulations to implement the provisions of Insurance Code sections 742.43, 779.21, 10195.1, 10234, 10506, 10704 and 12973.9. These Insurance Code sections, which provide the Commissioner with the explicit authority to promulgate filing regulations, empower the Commissioner to implement, interpret, or make specific the provisions of those Insurance Code provisions that require the filing of policy forms, certificates, rates, and other forms and documents, reference Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10168.93, 10192.14, 10192.15, 10192.19, 10205, 10225, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658 and 12250.



The existing regulation specifies procedures for the filing of paper form submissions to the Policy Approval Bureau and Actuarial Office of the CDI. The proposed amendments to the regulation would eliminate the submission of paper filings, and would instead require that all forms filed with the Policy Approval Bureau and Actuarial Office of the CDI be filed electronically through the System for Electronic Rate and Form Filing (SERFF) of the National Association of Insurance Commissioners (NAIC) for life, health, disability income, long-term care, variable annuity, and other form filings. The proposed amendments also eliminate provisions pertaining to paper filing, clarify nomenclature regarding actions on submissions, and use gender-neutral language.

The objective of the proposed amendment to the regulation is to modernize and simplify the form submission process, eliminate obsolete requirements (such as the use of carbon paper), and instead use the NAIC SERFF system for the electronic submission, review, communication during review, approval, storage, and retrieval of form submissions. As a further objective, electronic submission of form filings will reduce the use of paper in transactions between filers and the CDI and thereby improve the efficiency of the CDI's operations, enabling CDI personnel to access files from different locations without the cost and delay of transporting paper files, speed communication between filers and the CDI, provide for improved searching and faster retrieval of materials for public inspection, provide for improved file storage security through secure electronic storage of files with backup, improve file data integrity by permitting file access without removal or transport of the original file material from its storage location, and improve CDI's ability to aggregate file data as required for internal operations and for reporting of data to federal agencies.

Proposed adoption of new regulations, Title 10, Chapter 5, Subchapter 3, Article 1.5, "Corporate Affairs Bureau — Electronic Filing":

Existing law, Insurance Code sections 131, *et seq.*, 717, *et seq.*, 810, 827, 880, *et seq.*, 922.4, 922.5, 1011(c), 1104.9, 1215, *et seq.*, 1652, 1765, 10113.2, 11520, *et seq.*, 11691, *et seq.*, 12160, *et seq.*, 12250, *et seq.*, 12389, *et seq.*, provides that all insurers doing business in California must submit applications, registrations, notices, reports, or other material (collectively, "corporate applications") to the Commissioner.

Existing law further provides that the Commissioner may determine the form of such corporate applications.

The proposed regulations would require that all corporate applications (as defined) be submitted electronically by means of the CDI's OASIS (Online Assistance System for Insurer Submittals), or by means of the

NAIC's (National Association of Insurance Commissioners) online UCAA (Uniform Certificate of Authority Application) system.

The proposed regulations would also provide that electronic submission of corporate applications do not have any legal effect on the legal character of the documents nor any effect on the substantive requirements of the corporate applications.

The proposed regulations would also require filers to retain certain documents for a minimum of five years.

Finally, the proposed regulations would also provide for an effective date and for exemptions.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandates on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

#### COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency and no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code. There are no nondiscretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State.

#### ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

#### POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, except that insurance companies may realize ongoing minimal cost savings in postage, paper,

and file storage. Insurance companies will incur a filing fee of \$15 or less per submittal through SERFF, but most insurance companies already submit their filings through the SERFF system.

#### EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California; to assess the creation of new businesses or the elimination of existing businesses within the State of California; to assess the expansion of businesses currently doing business within the State of California. The Commissioner finds that this proposed regulation will streamline and modernize business processes with respect to filings submitted to the Department, but will not affect the creation or elimination of jobs within California, nor will it affect the creation of new businesses, nor the elimination of expansion of existing businesses within California.

The Commissioner also invites interested parties to comment on these issues.

#### FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the State that the proposed regulations apply to businesses.

#### IMPACT ON SMALL BUSINESS

The Commissioner has determined the proposed action will not affect small business. This proposed regulation only affects insurance companies. Per Government Code section 11342.610(b)(2), insurance companies are, by definition, not small businesses.

#### IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

#### ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has been otherwise identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burden-

some to affected private persons than the proposed regulations.

The Commissioner invites public comment on alternatives to the regulations.

#### DEADLINE FOR WRITTEN COMMENTS

All written comments, whether submitted at the hearing or by U.S. Postal Service or any other delivery service, or by e-mail or facsimile, must be received by the Commissioner, c/o the contact person at the address listed above, **no later than 5:00 p.m. on September 15, 2010.**

All persons are invited to submit statements, arguments, or contentions relating to the proposed regulations by submitting them in writing to the contact person **no later than 5:00 p.m. on September 15, 2010.** In the alternative, statements, arguments, or contentions may be presented orally at the public hearing.

#### ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person in order to make special arrangements, if necessary.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the CCR in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures.

Office of the Public Advisor  
California Department of Insurance  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for additional information.

#### TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Commissioner has prepared an Initial Statement of Reasons ("ISOR") that sets forth the reasons for the

proposed regulations. Upon request, the ISOR and the text of the proposed regulations will be made available for inspection and copying. Requests for the ISOR and the text of the proposed regulations should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the ISOR, and any supplemental information, is contained in the Rulemaking File: REG-2010-00008 and is available for inspection and copying by prior appointment at 45 Fremont Street, 23<sup>rd</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

#### **Final Statement of Reasons**

After it has been prepared, and upon request, the Final Statement of Reasons ("FSOR") will be made available for inspection and copying. Requests for the FSOR should be directed to the contact person listed above.

#### **AUTOMATIC MAILING**

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will be sent to all persons who have previously filed a request to receive notice of proposed rulemaking with the Commissioner.

#### **WEBSITE POSTINGS**

Documents concerning these proposed regulations are available on the CDI's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the link to 'Electronic Filing' and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter "REG-2010-00008" (the CDI's regulation file number for these regulations in the search

field. Alternatively, search by keyword ("electronic filing," for example, or "OASIS." Then, click on the 'Submit' button to display links to the various filing documents.

#### **MODIFIED LANGUAGE**

If the Commissioner adopts regulations which differ from those which have originally been made available but are sufficiently related to the original proposed regulations, the amended regulations will be made available to the public for at least 15 days prior to the date of adoption of the amended regulations. Interested persons should request a copy of the amended regulations from the contact person listed above.

### **TITLE 14. FISH AND GAME COMMISSION**

#### **Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 5510, 8389, 8550, 8552.1, 8553 and 8555, of the Fish and Game Code and to implement, interpret or make specific sections 713, 1050, 7850, 7850.5, 7852.2, 8043, 8053, 8389, 8550-8557, and 8559 of said Code, proposes to amend sections 163 and 164, Title 14, California Code of Regulations, relating to the commercial herring fishery.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulations would establish the fishing quota, season dates and times for fishing operations for the 2010-2011 season in San Francisco Bay based on the most recent biomass assessments of spawning populations of herring as well as season dates and times for fishing operations for the 2010-2011 season in Tomales Bay. There are no quota changes proposed for Crescent City Harbor, Humboldt or Tomales bays for the 2010-2011 herring season. Changes concerning number of permits per vessel, use of gillnet vessels in "off weeks", number of nets allowed, and herring permits for use in ocean waters are also included.



The following is a summary of the proposed changes in Sections 163, and 164, Title 14, CCR:

- Set the San Francisco Bay quota between zero (0) and 10 percent (0 and 3,841 tons) of the 2009–2010 spawning biomass. The Department is recommending that the San Francisco Bay quota be set at 1,920 tons, which is five percent of the 2009–2010 spawning biomass. If the Commission were to adopt this option, a 1,920 ton quota would result in a 3.4 ton individual quota for a “CH” gillnet permittee and a 4.1 ton individual quota for a non-“CH” gillnet permittee participating in the HEOK fishery.
- Set the dates of the roe herring fishery in Tomales Bay from noon on Sunday, December 26, 2010, until noon on Friday, February 25, 2011.
- Integrate the December DH platoon into the Odd and Even platoons. DH permittees with odd numbered permits would be assigned to the Odd platoon and permittees with even numbered permits would be assigned to the Even platoon.

The following are minor editorial changes proposed to improve clarity and consistency of the regulations:

- The proposed regulations would correct the Limited Entry Pacific Herring permit application number in subsection 163(b)(1) and the Herring Eggs on Kelp permit application number in subsection 164(h)(1) to coincide with the 2010–2011 season applications.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lions Gate Hotel, 3410 Westover Street, McCellan, California, on Thursday, September 16, 2010, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before September 8, 2010 at the address given below, or by fax at (916) 653–5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on September 13, 2010. All comments must be received no later than September 16, 2010, at the hearing in McCellan, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Jon K. Fischer, Deputy Executive Di-

rector, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sheri Tiemann at the preceding address or phone number. **Mr. John Mello, Marine Region, Department of Fish and Game, (707) 441–5755 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

No adverse incremental economic impact to businesses.

Japan remains the major market for California herring roe (Kazunoko), which is processed for consumption in Japan as a traditional salted roe product or flavored roe product. Recent gains in the Japanese Yen, against the US dollar, could foretell increase demand for California herring roe. However, the Russian federation is emerging as a strong market competitor to the US, with their herring exports to Japan growing at an enormous rate. This growth is reinforced as herring roe continues to hold top market position year to year, with 18 of 25 Japanese seafood firms noting that it was their best-selling commodity.

The California commercial herring fishery takes place in four areas; San Francisco Bay, Tamales Bay, Humboldt Bay, and Crescent City Harbor. However, the greatest economic activity is derived from herring roe ventures in San Francisco Bay, which typically generate about 90 percent of the total average annual value for this California fishery. In real 2009 dollars, San Francisco Bay herring landings have averaged about \$375,000 in ex-vessel revenue to the fishermen since 2004. All of these herring fishermen and herring processing plants are small businesses as defined under California Government Code Section 11342.610.

The Department recommended a zero ton quota or no fishery option for the 2009–2010 season when the herring spawning biomass in 2008–2009 fell to a new historical low of 4,833 tons. The spawning biomass estimate for the 2009–2010 season was 38,409 tons, which fell below the historical average (1978–1979 season to present) of 49,084 tons. Depending on which harvest option the Commission chooses for 2010–2011, the harvestable quota may be between zero and 3,841 tons (or zero to 10 percent of the 2009–2010 spawning estimate of 38,409 tons). Relative to last year’s closed season, this potential harvest range represents a positive incremental impact of \$1.8 million to \$3.6 million in ex-vessel revenue, or direct revenue to the fishermen; assuming the final decision will be between five percent and ten percent of the biomass, respectively. The resulting total output contribution to the State’s economy from this direct revenue is \$3.2 million to \$6.5 million. This is based on an economic output multiplier of 1.774 for calculating total direct, indirect, and induced impacts to California’s economy from the herring fishery.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Given a potential range of \$1.8 million to \$3.6 million in positive direct revenue to the fishermen, the employment impacts are estimated to be about 397 to 793 jobs supported. This is based on an employment multiplier of 218.3 jobs per million dollars produced in direct fishing revenue from the California herring fishery.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new fees or

reporting requirements stipulated under the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **TITLE 17. DEPARTMENT OF PUBLIC HEALTH**

**ACTION:** Notice of Proposed Rulemaking  
Title 17, California Code of Regulations

**SUBJECT:** General License Requirements,  
DPH-07-002.

### **PUBLIC PROCEEDINGS**

Notice is hereby given that the California Department of Public Health will conduct written public proceedings, during which time any interested person or such person’s duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The California Department of Health Services was legislatively reorganized as of July 1, 2007 (SB 162, ch.

241, Stats. 2006) into two separate departments, the Department of Health Care Services and the Department of Public Health (Department). The Department received authority for certain duties and responsibilities formerly carried out by the Department of Health Services pursuant to Health and Safety Code (HSC) sections 131051 and 131200.

The Radiation Control Law (HSC sections 114960 et seq.) requires the Department to develop programs for licensing and regulating radioactive materials (HSC section 115000(b)). In 1962, the California Legislature granted approval for the State to enter into an agreement with the United States Atomic Energy Commission (AEC), the predecessor of the current NRC. By such action the AEC discontinued its regulatory authority over certain radioactive materials within the State (HSC section 115230), and California became an “Agreement State.”

A provision of the agreement between California and the NRC specifies that the State “will use its best efforts to maintain continuing compatibility between its program and the program of the [United States Atomic Energy] Commission for the regulation of like materials.” (HSC section 115235, art. V.) NRC’s stated policy is “to evaluate Agreement State programs established pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, to ensure they are adequate to protect public health and safety and compatible with NRC’s regulatory program.”<sup>1</sup> To determine a state’s compatibility, the NRC uses Management Directive 5.9, *Adequacy and Compatibility of Agreement State Programs, Handbook 5.9*.<sup>2</sup> This handbook describes the specific criteria and process that are used to clarify both the NRC program elements that should be adopted and implemented by an Agreement State for purposes of compatibility, and also those NRC program elements that have a particular health and safety significance. The NRC rates the elements on the degree of compatibility required. Thus, the NRC requires that some be adopted by the states in a form identical to the NRC’s, while adoption of others need not be identical but is required to meet the essential objective of the program element. (For NRC compatibility definitions, see Attachment 1.) The overall determination of adequacy and compatibility for an Agreement State is made pursuant to Management Directive 5.6, *The Integrated Materials Perfor-*

*mance Evaluation Program (IMPEP)*.<sup>3</sup> The NRC evaluates Agreement States every three to four years to determine if a state’s radiation safety program meets the adequacy and compatibility criteria. If California fails to meet those criteria, the NRC may revoke California’s status as an Agreement State.

The NRC amends its regulations on a frequent basis. NRC amendments can affect the compatibility of State regulations with those of the NRC, and may potentially impact California’s status as an Agreement State. To ensure California’s compliance with the NRC agreement and the compatibility of its regulations, this proposal addresses changes made to title 10, Code of Federal Regulations, Part 31 (10 CFR 31) specified in the December 18, 2000 issue (65 Fed. Reg. 79161) and the October 16, 2007 issue (72 Fed. Reg. 58473) of the Federal Register. Due to those changes, related sections were reviewed for compatibility with NRC-equivalent regulations. Needed changes were identified. Therefore, this proposal amends, adopts or repeals State regulations pertaining to the General License provisions found in 10 CFR 31 and 40 and the reciprocity provisions found in 10 CFR 150.

Nonsubstantial changes are made in each section to correct grammar, spelling, or capitalization, to include the use of acronyms in order to reduce the physical size of the regulations, or to maintain consistency with proposed changes.

The authority and reference citations are being amended, resulting in nonsubstantial changes pursuant to 1 CCR 100, to reflect the following:

- The numbering system implemented by the 1995 recodification of the Health and Safety Code.
- The reorganization of the Department of Health Services into the California Department of Health Care Services and the California Department of Public Health, pursuant to SB 162 (Stats. 2006, ch. 241).

The Department has determined that, because the radiation control program must maintain compatibility with the regulations of the United States Atomic Energy Commission, the predecessor to the United States Nuclear Regulatory Commission (HSC section 115230), and according to the agreement, the state is to use its “best efforts to maintain continuing compatibility between its program and the program of the [United States Atomic Energy] Commission for the regulation of like materials. . .” (HSC section 115235, art. V), no alternative considered by the Department would be more effective in carrying out the purpose for which the regula-

<sup>1</sup> “Adequacy and Compatibility of Agreement State Programs,” Management Directive 5.9, page 1. The document is available at the Nuclear Regulatory Commission, Office of State Programs website: <http://nrc-stp.ornl.gov/procedures.html>. (Reference 1.)

<sup>2</sup> “Adequacy and Compatibility of Agreement State Programs,” Management Directive 5.9, Handbook 5.9. The document is available at the Nuclear Regulatory Commission, Office of State Programs website: <http://nrc-stp.ornl.gov/procedures.html>. (Handbook 5.9 is included within Reference 1.)

<sup>3</sup> “Integrated Materials Performance Evaluation Program (IMPEP),” Management Directive 5.6. The document is available at the Nuclear Regulatory Commission, Office of State Programs website: <http://nrc-stp.ornl.gov/procedures.html>. (Reference 2.)



tion is proposed. No alternative considered by the Department would be as effective as, and less burdensome to, affected private persons than the proposed regulation.

The Department proposes to:

Amend **Section 30108** to reference all provisions applicable to registration.

Add **Section 30108.1** to specify how to register as possessing devices described in sections 30192.1 and 30192.6 and for consistency with 10 CFR 31.5.

Amend **Section 30115** to exempt persons possessing devices pursuant to sections 30192.1 or 30192.6 from the report of change requirements in this section.

Amend **Section 30125** to specify that a person possessing devices pursuant to section 30192.6 is not excluded from registration requirements.

Amend **Section 30145** to specify the fees for registering devices described in section 30192.1 and to clarify other provisions in the section due to the proposed addition of specified fees.

Amend **Section 30190** to address other related regulations regarding general and specific licensing and registration of devices. Further, grammatical changes are made, which are nonsubstantial changes.

Amend **Section 30191** to maintain consistency with 10 CFR 40.22 regarding general licenses for possession of source material.

Amend **Section 30192** to maintain consistency with 10 CFR 31.3 regarding general licenses for possession of radioactive material contained in static elimination or ion generation devices.

Amend **Section 30192.1** to maintain consistency with 10 CFR 31.5 regarding general licenses for possession of radioactive material contained in gauging and controlling devices.

Amend **Section 30192.2** to maintain consistency with 10 CFR 31.7 regarding general licenses for possession of radioactive material contained in aircraft safety devices.

Amend **Section 30192.3** to maintain consistency with 10 CFR 31.8 regarding general licenses for possession of radioactive calibration or reference sources.

Amend **Section 30192.4** to maintain consistency with 10 CFR 31.10 regarding general licenses for possession of radioactive material contained in ice detection devices.

Amend **Section 30192.5** to maintain consistency with 10 CFR 31.11 regarding general licenses for possession of radioactive material for diagnostic in vitro test kits, and to make nonsubstantial changes.

Amend **Section 30192.6** to maintain consistency with 10 CFR 40.25 regarding general licenses for possession of depleted uranium in industrial products used to provide a concentrated mass of the product.

Amend **Section 30225** to maintain consistency with 10 CFR 150.20 by clarifying that reciprocal recognition of licenses issued by specified entities does not authorize the conduct of activities in areas that are under exclusive federal jurisdiction within this State.

Add **Section 30226** to specify that a person generally licensed by the NRC or an Agreement State other than this State need not register unless they use the device in this State for a period exceeding 180 calendar days, for consistency with 10 CFR 31.5.

Repeal **Section 30236** and recodify it under section 30192.5.

Amend **Section 30257** to maintain consistency with 10 CFR 30.34(h) regarding bankruptcy notification by persons possessing devices under a general license pursuant to sections 30192.1 or 30192.6.

## AUTHORITY

Sections 114970, 114975, 115000, 115060, 115065, 115080, 115085, 131051, 131052, 131055 and 131200, Health and Safety Code.

## REFERENCE

Sections 114965, 114970, 114980, 114985, 114990, 115000, 115060, 115065, 115080, 115085, 115090, 115093, 115105, 115110, 115120, 115165, 115175, 115205, 115230 and 115235, Health and Safety Code.

## COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations and Hearings by 5 p.m. on September 15, 2010, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations and Hearings, California Department of Public Health, MS 0507, 1501 Capitol Avenue, P.O. Box 997377, Sacramento, CA 95899-7377. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-5747; or
3. By email to [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov) (it is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-07-002" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

## INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Phillip Scott, Radiologic Health Branch, at (916) 440-7978.

All other inquiries concerning the action described in this notice may be directed to Marylyn Willis, Office of Regulations and Hearings, at (916) 440-7807, or to the designated backup contact person, Coleen Keelan, at (916) 440-7439.

## CONTACTS

**In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-07-002.**

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations and Hearings, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rule-making file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations and Hearings.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at [www.cdph.ca.gov](http://www.cdph.ca.gov) by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7807 (or the California Relay Service at 711), send an email to [regulations@](mailto:regulations@)

[cdph.ca.gov](http://cdph.ca.gov), or write to the Office of Regulations and Hearings at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations and Hearings at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

## FISCAL IMPACT ESTIMATE

A. Fiscal Effect on Local Government: There will be an impact as described in item B.1 below.

B. Fiscal Effect on State Government:

1. State agencies using radiation sources are subject to the proposal. Health & Safety Code section 115065 requires agencies to pay fees. Based on Department data, there are approximately 4,500 devices that must be registered. If all 4,500 devices were possessed by government entities and not exempt from the proposed \$70 registration fee, the maximum annual cost is \$315,000 per year, but because current database configuration does not identify whether a radiation user is state government or meets the exemption criteria, an accurate estimate of total cost cannot be made. Therefore, actual costs to agencies cannot be estimated, but are expected to be less than \$315,000.

2. Based on Department data, there are approximately 4,500 devices that must be registered. This proposal would charge a registration fee of \$70 per device but would exempt specific licensees possessing devices from paying registration fees. Thus, assuming all licensees subject to registration of devices and not exempt paid fees, the Radiation Control Fund (RCF) would increase by \$315,000. There are licensees who would meet the exemption proposal, but current data does not identify these licensees. Therefore, actual increases to the RCF cannot be estimated, but are expected to be less than \$315,000.

C. Fiscal Effect on Federal Funding of State Programs: None.

- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: There will be a fiscal impact on private persons or businesses possessing devices that must be registered. This proposal would charge a registration fee of \$70 per device, but would exempt specific licensees possessing devices from paying registration fees. Current data indicates that approximately 2,500 licensees would have to register 4,500 devices resulting in an average of 1.8 devices per licensee ( $4,500 \div 2,500 = 1.8$  rounded) or \$140 per licensee per year. However, there are licensees who would meet the exemption proposal but current data does not identify these licensees.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

#### DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would affect small business.

The Department has determined that the regulations will have no impact on housing costs.

#### ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the

attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code section 11346.8. For individuals with disabilities, should a public hearing be scheduled, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of written public hearing materials into Braille, large print, audiocassette, or computer disk. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing. To request such services or copies of materials in an alternate format, please write to Marylyn Willis, Office of Regulations and Hearings, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, or call (916) 440-7807, or use the California Relay Service by dialing 711.

## TITLE 22. EMPLOYMENT TRAINING PANEL

### NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Employment Training Panel (Panel) proposes to adopt Section 4451 and to amend Sections 4400, 4401.5, 4405, 4417, 4427, 4429 and 4447 of Title 22 of the California Code of Regulations. The text of the proposed actions are accessible under *Pending Regulatory Actions* (ETP Rules tab) and *What's New* (homepage) at [www.etp.ca.gov](http://www.etp.ca.gov).

### AUTHORITY AND REFERENCE

The Panel's rulemaking authority is contained in Unemployment Insurance (UI) Code Section 10205(m). The Panel is implementing, interpreting and making specific the UI Code sections listed under each regulation section below.

#### Section 4400

UI Code Sections 10200(a), 10201(b)(2)(A), (B), (3), (c), (f), (g), (i), (j), 10202, 10203, 10204(b), 10205, 10206(a)(1)(C), (a)(2), (3), 10207(a), 10209(a), (b), 10213, 10213.5(b), and 10204.5(a).

#### Section 4401.5

UI Code Sections 10201(b) and 10205(m).



Section 4405

UI Code Sections 10205(c), (d), (j), (k), (l), 10206(b), 10207(b), 10213 and 10213.5.

Section 4417

UI Code Sections 10205(m) and 10200(a)(3).

Section 4427

Sections 10205(m) and 10201(b).

Section 4429

Sections 10205(m), 10201.5 and 10214.5.

Section 4447

Section 10205(k).

INFORMATIVE DIGEST

A summary of the eight proposed actions and their purpose is set forth below:

One Adoption

**4451. Alternate Funding Source:** The adoption of a new “umbrella” regulation would establish when definitions and performance standards for the core program may be used for alternative funding programs.

There would be an option for the Panel to apply the statutory definitions and standards that govern the core program, with modification as may be needed in its best judgment to further the goals of the alternative funding source. This regulation would require the Panel to adopt guidelines for each alternative-source program giving notice of possible modifications.

This new regulation would also require the Panel to identify priority industries and occupations; and to focus on training in new or upgraded job skills with the intent of achieving full-time and secure employment in each alternative-source program.

Seven Amendments

**4400. Definitions:** The proposed amendment would **delete** four existing definitional terms: “costs of program administration” at Subsection 4400(b); “demonstrable shortage [of workers]” at Subsection 4400(d); “Director” at Subsection 4400(e); “CBT” at existing subsection 4400(ff); and “videoconference” at Subsection 4400(gg).

The proposed amendment would **add** two terms: “alternative funding source” at new Subsection 4400(b) and “core program” at new Subsection 4400(c).

The proposed amendment would **revise** two terms: “days” at Subsection 4400(d) and “training” at Subsection 4400(y).

***Details on Definition of Training at Section 4400(y)***

The proposed amendment would revise the definition of “training” at existing **Section 4400(y)** to change minimum hours from 40 to 8, in keeping with current

Panel practice, and to authorize funding and set parameters for productive laboratory training.

At **Subsection 4400(1)** this amendment would establish parameters for classroom/laboratory training. At **Subsection 4400(2)** it would define “productive lab” as distinct from simulated lab, and incorporate the same parameters.

At **Subsection (3)** it would eliminate the methodology for standard reimbursement at 100% of training hours delivered for 80% of hours attended. At **renumbered Subsection (3)** it would implement the definition of Advanced Technology (AT) training, and incorporate the same parameters as in Section 4400(y)(1).

At **Subsection 4400(4)** it would update the definition of electronic-delivery training (E-Learning) consistent with current terminology. It would incorporate the same parameters as in Section 4400(y)(1) for payment at the class/lab rate, as distinct from Computer-Based Training (CBT). *NOTE:* The definition of Videoconference training at Section 4400(gg) would be repealed, as discussed above.

At **Subsection (5)** this amendment would clarify that CBT is self-paced; but is only payable for the standard number of hours established for the course by the vendor or employer. *NOTE:* The definition of CBT at Section (y)(ff) would be repealed, as discussed above.

At **Subsection (6)** this amendment would establish that the class/lab rate or AT rate is only payable for hours of training delivered. (As compared to the CBT rate which is payable for benchmark hours.)

At **Subsection (7)** this amendment would clarify the existing trainer-to-trainee ratios for each method of training delivery.

At **Subsection (8)** this amendment would: delete outdated references to Structured On-Site Training (SOST), because this program is obsolete; update the definition of CBT; and delete the definition of Videoconference.

Other minor revisions are proposed throughout Section 4400(y) for clarity and consistency. **Renumbering would occur as needed.**

**4401.5. Employer Eligibility:** Existing Section 4401.5 limits new-hire trainee placements with employers that are not subject to the payment of the Employment Training Tax. Such placements must be incidental to a training plan and are capped at 20% of the total trainee population.

The proposed amendment would provide that “incidental” means placements that are “. . . part of a training project designed to meet the needs of one or more eligible employers” as specified at UI Code Section 10201(b).

The proposed amendment would not revise the existing 20% cap, but would establish the Panel’s authority to modify it for good cause on a case-by-case basis.

The existing regulation prohibits the incidental placement of new-hire trainees with federal agencies, and this amendment would allow such placements.

Minor clarifying revisions are also proposed throughout Section 4401.5.

**4405. Funding Limitations:** Existing Section 4405 sets forth a list of conditions under which the Panel may impose funding restrictions. The list was intended by way of example but as currently worded it is restrictive. The amendment would amend it to read: “Any funding restrictions . . . may include, but are not limited to, the following:”

**4417. Secure Job:** Existing Section 4417 implements the requirement that ETP funds must only be used for training that will result in a secure job, pursuant to UI Code Section 10200(a). The existing regulation measures job security by the employer’s turnover rate in effect prior to funding proposal, and in the final 12 months of funding.

The proposed amendment would clarify the three “turnover rates” that govern the Panel’s assessment. These rates are: 1) threshold rate of 20%, 2) trigger rate unspecified but historically set at 20%, and 3) penalty rate of 25%.

The threshold rate is 20%, as measured in the calendar year prior to approval of funding, which would not change. The penalty rate is 25% as measured in the final year of funding, which would not change.

The proposed amendment would clarify the Panel’s authority to establish a trigger rate at or above 20%, case-by-case. The proposed amendment would also clarify the types of employee separations that must be included in turnover. Other minor clarifying revisions would be made.

**4427. Temporary Agency:** Existing Section 4427 borrows the concept of “incidental placements” from Section 4401.5 and applies it to placement of new-hire trainees as Temporary Workers. In general, existing Section 4427 caps such placements at 10% of the total trainee population, except for a “temporary to permanent” hiring model. The proposed amendment would limit placement as Temporary Workers at 20% consistent with Section 4401.5.

The proposed amendment would also delete the term “incidental” because the Temporary Agency must be an eligible employer, thus these placements need not be incidental to an overall training plan. Other minor clarifying revisions would be made.

**4429. High Unemployment Areas:** Existing Section 4429 establishes that a county or region must have an unemployment rate exceeding the state average by at least 25% based on data collected by the Labor Market Information Division (LMID) to be designated as a High Unemployment Area (HUA).

The proposed amendment would retain this standard, but add an alternate standard for years in which the statewide average annual unemployment rate (Benchmark Rate) is at or above 10%. Under the alternate standard, the rate in a county or region (Regional Rate) must only be 15% higher.

The existing regulation states that the Panel will follow the Benchmark Rate and Regional Rates set by LMID at the beginning of the Calendar Year, as posted on the ETP and LMID websites. The amendment would clarify that ETP will follow an updated rate if it favors designation as a HUA.

The proposed amendment would also recognize the Panel’s authority to modify wages in a HUA without regard to a specific differential (increase). The governing statute requires a wage differential between the period before and after training, but it does not specify a percentage or other factor.

Finally, the proposed amendment would conform the number of employers required for retention when trainees are in non-traditional occupations, from the existing regulatory standard (up to two employers) to the statutory standard (up to three employers).

**4447. Unearned Payments:** Existing Section 4447 requires return of unearned payments within 75 days of contract termination. The amendment would update a reference to the Revenue and Taxation Code, and make other minor clarifications. It would also shorten the regulation title to: “Unearned Payments” as shown here.

The purpose and necessity for all of the proposed regulatory actions above are set forth in the Initial Statement of Reasons.

## FISCAL DISCLOSURES

The Panel has made the following initial determinations regarding fiscal disclosures as required by Government Code Section 11346.2.

**A. Fiscal Impact.** The proposed actions do not impose costs or savings requiring reimbursement under Section 17500 *et seq.* of the Government Code. Also, these actions do not impose non-discretionary costs or savings to any local agency; nor do they impact federal funding for the State. The proposed actions do not impose costs, nor do they affect any cost or savings on any other state agency.

**B. Cost Impacts.** The Panel is unaware of any cost impacts (including housing costs) that a representative private person or business would necessarily incur to reasonably comply with the proposed actions. The same determination applies to housing costs. This action would clarify the Panel’s standards for reviewing and funding training proposals.

C. Adverse Impact on Business. The proposed actions do not have any significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. These actions would have a positive effect since it would better implement the statutory goal of achieving a “strategically designed employment training program” pursuant to Unemployment Insurance Code Section 10200. The overall purpose of the Panel’s program is to enhance the ability of California businesses to meet the challenge of competition from other states.

D. Effect on Small Business. The proposed actions will not affect small businesses unless they seek training funds. Since this action would clarify and update the Panel’s standards for reviewing and funding training proposals, this would be a positive effect.

E. Effect on Jobs and Business Expansion. The proposed actions would not directly create or eliminate jobs in California. However, the proposed actions give the Panel additional discretion to design training projects responsive to recessionary conditions, e.g., adjusting the definition of high unemployment areas in proposed amended Section 4429. Thus, it is believed that the proposed actions over-all will indirectly foster the creation of jobs in California.

Aside from the indirect effects mentioned in the foregoing, the proposed actions will not create new businesses or eliminate existing businesses in California. Aside from the indirect effects mentioned in the foregoing, these actions would not directly affect the expansion of businesses currently operating in California.

The overall intent and purpose of the ETP program is to foster job creation and the retention of high-wage, high-skilled jobs that are threatened by out-of-state competition. (UI Code Section 10200(a).) The Panel must give funding priority to project that would train new employees of firms locating or expanding in the state; train displaced workers, and develop workers with skills that prepare them for the challenges of a high performance workplace. (UI Code Section 10200(b).) Thus, the panel has made an initial determination that the proposed action may encourage the retention of jobs and businesses in California, in the sense that it would enhance the Panel’s ability to implement the purpose of the ETP program.

F. Imposed Mandate. The proposed actions do not impose a mandate on local agencies or school districts.

carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons, than the proposed action. The Panel has made an initial determination that there is no reasonable alternative to the regulatory proposed action that would be more effective in carrying out its purpose, or would be as effective and less burdensome to affected private parties. Interested persons are welcome to identify reasonable alternatives during the written comment period. [Note: Alternatives considered or reported are set forth in the Initial Statement of Reasons.]

#### WRITTEN COMMENT PERIOD

A 45-day written comment period has been established beginning on July 30, 2010 and ending at 5:00 p.m. on September 13, 2010. Any interested person, or his or her authorized representative, may present written comments on the proposed actions within that time period. Comments should be sent to:

William Stuart, Staff Counsel  
Employment Training Panel, Legal Unit  
1100 “J” Street, Fourth Floor  
Sacramento, California 95814  
Telephone: (916) 327-5578  
E-Mail: [wstuart@etp.ca.gov](mailto:wstuart@etp.ca.gov)  
FAX: (916) 327-5268

#### PUBLIC HEARING

A public hearing will not be held unless one is requested by an interested person, or his or her authorized representative. The request must be submitted in writing to Mr. Stuart at the address shown above no later than 5:00 p.m. on the fifteenth day before the written comment period ends. The request should identify the specific regulatory action for which the hearing is requested.

Modifications to the text of the proposed regulatory actions may be made after the public comment period. If so, they will be posted under Pending Regulatory Actions and ETP Rules at [www.etp.ca.gov](http://www.etp.ca.gov). They will also be available upon request to Mr. Stuart. Any modifications will be open to public comment for at least 15 days before being adopted, as noticed on the ETP Website.

ETP will make the modifications available to all persons who submit written comments or testify, or who request notification.

#### REASONABLE ALTERNATIVES

The Panel must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in

#### AVAILABILITY OF DOCUMENTS

The Panel has prepared an Initial Statement of Reasons for the proposed actions, and has compiled all information on which the actions were based. This state-



ment, along with the express text of the proposed actions and the written information on which they were based, are available for inspection at the written comment address shown above. Any inquiries should be directed to Mr. Stuart.

The Panel will prepare a Final Statement of Reasons at the conclusion of the public comment period. This Final Statement and the information on which it is based will also be available for inspection at the addresses shown above. Again, any inquiries should be directed to Mr. Stuart.

This Notice of Proposed Rulemaking is posted on the ETP Website at [www.etp.ca.gov](http://www.etp.ca.gov). The Initial Statement of Reasons and the express text of the proposed actions are also posted on the ETP Website.

#### **CONTACT PERSONS**

Requests for copies of the express text of the proposed actions and the modified text (if any), and the Initial Statement of Reasons, should be directed to Mr. Stuart at the written comment address shown above. In addition, the “rulemaking file” of information on which the proposed actions are based is also available for inspection upon request made to Mr. Stuart.

In the event Mr. Stuart is unavailable, inquiries regarding the proposed regulatory actions should be directed to General Counsel Maureen Reilly at the same address or by phone at (916) 327-5422 or email at [mreilly@etp.ca.gov](mailto:mreilly@etp.ca.gov).

### **TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

#### **45-DAY PUBLIC NOTICE AND COMMENT PERIOD**

#### **WATER QUALITY MONITORING REQUIREMENTS FOR HAZARDOUS WASTE LAND DISPOSAL UNITS**

**Department Reference Number: R-2004-11**

**Office of Administrative Law Notice File Number:  
Z-2010-0720-01**

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations (Cal. Code Regs.), title 22, division 4.5, chapter 14, article 6, sections 66264.90, 66264.94, 66264.97, 66264.98, 66264.99, 66264.100 and chapter 15, article 6, sections

66265.90, 66265.91, 66265.97, 66265.98, and 66265.99.

#### **PUBLIC HEARING AND WRITTEN COMMENT PERIOD**

A written comment period has been established commencing on July 30, 2010 and closing on September 15, 2010. DTSC will hold a public hearing on the proposed regulations at 9:00 a.m. on September 15, 2010 in the Sierra Hearing Room, 2<sup>nd</sup> Floor, 1001 “T” Street, Sacramento, at which time any person may present statements or arguments, orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on September 15, 2010 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:00 a.m. to 12:00 p.m. (noon). Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 “T” Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building’s public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver’s license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

If you have special accommodation or language needs, please contact Jeff Woled, Regulations Coordinator, Regulations Section, at (916) 322-5225 or by email at [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov) September 1, 2010. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

In accordance with the California Government Code and Americans with Disabilities Act requirements, this publication can be made available in Braille, large print, computer disk, tape cassette, etc. as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact Adrian Re-



cio at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov.

## AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 25159. This section grants DTSC authority to adopt regulations allowing the state to maintain authorization to administer a state hazardous waste program in lieu of the federal program under the Resource Conservation Recovery Act.

Health and Safety Code section 58012 (Added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991). This section grants DTSC authority to adopt regulations to execute its duties.

The proposed state regulations are based on, but are not identical to, the following federal regulations: 40 CFR Sections 264.90, 264.94, 264.97, 264.98, 264.99, 264.100, 265.90, and 265.91.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### Existing Law

The Department of Toxic Substances Control (DTSC) regulates hazardous waste facilities and businesses that generate hazardous waste. DTSC has the primary responsibility for evaluation and remediation of hazardous waste sites and releases to land, surface water, groundwater, and air from hazardous waste facilities.

Owners and operators of permitted and interim status hazardous waste surface impoundments, waste piles, land treatment units, and landfills are required to monitor groundwater, surface water and the unsaturated zone to detect, characterize and respond to releases. These requirements also apply to miscellaneous units and to hazardous waste tank units that cannot be clean closed and therefore are considered disposal units. The water quality monitoring requirements are found in Cal. Code Regs., title 22, division 4.5, chapters 14 and 15, article 6.

Water quality monitoring for hazardous waste land disposal units consists of a detection monitoring program, an evaluation monitoring program, and a corrective action monitoring. Each program requires monitoring of the groundwater, vadose (unsaturated) zone, and surface water.

Some of the requirements may be technically infeasible or resource-intensive, or provide minimal environ-

mental benefit, depending upon site-specific conditions. Presently, the only option for facilities is to apply for a variance and to seek DTSC approval for any deviation from the regulations. This is a cumbersome, resource-intensive process for both facilities and DTSC.

The current regulations implicitly assume that the regulated hazardous waste disposal unit is isolated from other hazardous or solid waste management units. When releases occur from adjacent sources, their respective groundwater plumes may commingle. Groundwater monitoring for a commingled plume poses a particular challenge under current regulations. Owners or operators of a single facility may be able to conduct water monitoring for another source of the release under DTSC's more flexible Corrective Action or Site Cleanup authorities in Health and Safety Code Chapters 6.5 and 6.8 respectively, or under oversight by one of the Regional Water Quality Control Boards under Cal. Code Regs., title 27. Since it is often difficult to determine if the plume is from the regulated unit or a different unit, oversight under multiple regulatory authorities may be duplicative and confusing for owners and operators, the public and the regulators.

In general, the Water Board regulations for cleanup of contaminated sites are found in Cal. Code Regs., title 27. However, the Water Board requires water quality monitoring for hazardous waste land disposal units (referred to as Class I facilities) under Cal. Code Regs., title 23, chapter 15, article 5. The Water Board regulations are similar to Cal. Code Regs., title 22, article 6 but require monitoring and cleanup of nonhazardous constituents that affect beneficial uses of waters of the state as well as hazardous constituents. The Water Board issues Waste Discharge Requirements (WDRs) to Class I facilities; the requirements may be incorporated into a facility's hazardous waste permit.

Current federal law is less stringent than California's requirements and does not address various requirements, in particular, surface water or vadose zone (unsaturated zone) monitoring. In addition, two revisions to federal law, the RCRA Burden Reduction Initiative of 2006 and the Post-Closure Rule of 1998, streamlined various federal requirements for hazardous waste facilities that were considered overly burdensome, including groundwater monitoring requirements for RCRA hazardous waste land disposal facilities. The federal Post-Closure Rule of 1998 also provided flexibility for groundwater monitoring requirements at RCRA hazardous waste land disposal facilities.

### Policy Statement Overview

#### Broad Objectives:

- Provide regulatory flexibility to achieve environmental standards

- Maximize environmental benefit by ensuring that resources go toward environmental priorities rather than requirements that may not be feasible

**Specific Objectives:**

- Provide regulatory alternatives when requirements are not technically feasible or provide minimal or no environmental benefit
- Facilitate a single site-wide monitoring program for evaluation and cleanup of commingled plumes

**Proposed Regulations**

The proposed rulemaking would make the following changes:

- Streamline water quality monitoring requirements for surface water, groundwater, and soil pore liquid at regulated units,
- Allow regulatory flexibility for assessing and cleaning up groundwater contamination when a release from a regulated unit has combined (commingled) with a release from another solid waste management unit (SWMU). A SWMU is any unit at a hazardous waste facility from which hazardous constituents might migrate. Flexibility would be provided by allowing the use of alternative requirements, including Resource Conservation and Recovery Act (RCRA) corrective action requirements or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site cleanup requirements identified in California Health and Safety Code Chapters 6.5 or 6.8, respectively.
- Add a new requirement that groundwater wells for regulated units be adequately decommissioned if the wells no longer provide useful information,
- Change the reporting requirement for corrective action effectiveness from semi-annual to annual, consistent with recent changes to the federal reporting requirement under the RCRA Burden Reduction Initiative,
- Allow modification or exclusion of surface water monitoring requirements for regulated units if requirements are impracticable or technically inappropriate,
- Allow modification or exclusion of unsaturated zone monitoring requirements if technically inappropriate or due to technical limitations, and
- Allow modification of the number of monitoring points and number of specific Appendix IX analytes for analysis based on site-specific conditions during annual sampling during several phases of remediation.

The proposed draft rulemaking adopts select text based on two federal rulemakings: the Post-Closure Rule of 1998 and the RCRA Burden Reduction Initiative of 2006.

New regulatory text allows significant water quality monitoring program flexibility, consistent with the federal Post-Closure Rule of 1998, 40 CFR Section 264.90, for the owner or operator of a permitted hazardous waste land disposal unit with a commingled plume. This revision allows the owner or operator of a permitted or interim status hazardous waste land disposal unit that is situated among solid waste management units (SWMUs) or areas of concern to replace all or part of the requirements in Cal. Code Regs., title 22, chapter 14, article 6 with alternative requirements if a release has occurred, and both the regulated unit and one or more SWMUs (or areas of concern) are suspected of contributing to the release.

The proposed regulations provide regulatory efficiency and environmental benefit by eliminating potentially duplicative water quality monitoring requirements and allow a facility with a commingled plume to establish a single site-wide monitoring program. Examples of alternative requirements include corrective action requirements in Health and Safety Code Chapter 6.5 and site cleanup requirements identified in Health and Safety Code Chapter 6.8.

This change is consistent with revisions to 40 CFR Section 264.90 implemented pursuant to the federal Post-Closure Rule of 1998 and would allow California to implement provisions that are already in effect in other states.

The proposed regulations do not address the manner by which hazardous waste facilities would implement the changes. In some cases, any changes from a facility's current practices can be incorporated into a permit renewal or issuance of a new permit or post-closure permit. When a facility does not have a permit renewal or issuance of a new permit or post-closure permit, changes will generally be implemented by permit modification in accordance with Cal. Code Regs., title 22, section 66270.42.

**CALIFORNIA ENVIRONMENTAL QUALITY  
ACT (CEQA) COMPLIANCE**

DTSC has prepared a Notice of Exemption that indicates no significant effect from the project on the environment. This document is available for review with the rulemaking file and is also being noticed and circulated for comment pursuant to the requirements of the CEQA Guidelines. A copy of the draft CEQA document will be available from the Laws, Regulations and Policies page

of the DTSC Internet site: <http://www.dtsc.ca.gov/LawsRegsPolicies/index.cfm>.

#### PEER REVIEW

Under the provisions of Health and Safety code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

#### BUSINESS REPORT

DTSC has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c).

#### FISCAL IMPACT ESTIMATES

**Mandates on Local Agencies and School Districts:** DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

**Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement:** DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

**Cost or Savings to Any State Agency:** DTSC has made a preliminary determination that the proposed regulations will have no impact on State revenue or costs.

**Cost or Savings in Federal Funding to the State:** DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

**Effect on Housing Costs:** DTSC has made an initial determination that there will be no impact on housing costs.

**Cost Impacts on Representative Private Persons or Businesses:**

DTSC has made an initial determination that the adoption of these regulations will save owners or operators of California's hazardous waste land disposal units significant amounts of money when compared with the current regulatory requirements. The proposed regulations offer flexibility for water quality monitoring requirements that currently are not feasible or do not provide significant environmental benefit because of site-specific conditions. Although the amount of savings cannot be precisely determined at this time, savings are

expected from reduction in water level monitoring frequency, reduced number of groundwater sample analyses, and the resulting reduction in report generation, especially for DTSC estimates that statewide savings could exceed \$2.5 million per year.

#### **Significant Statewide Adverse Economic Impact on Businesses:**

DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

#### **Assessment Statement:**

- (A) **Creation or elimination of jobs within California** — DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California** — DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California** — DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

#### **Effect on Small Businesses:**

These regulations are not expected to result in any impacts on small businesses since the regulations primarily affect large companies by providing potential savings.

#### CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

#### AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations will be available from the Laws, Regulations and Policies page of the DTSC Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/index.cfm> or may be obtained from

Jeff Woled of DTSC's Regulations Section as specified below. The information upon which DTSC relied to develop these documents is also available at the address listed below.

#### POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Jeff Woled at the address listed below. A copy of the Final Statement of Reasons will also be available from the Laws, Regulations and Policies page of the DTSC Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/index.cfm> along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

#### CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Nancy Ostrom of DTSC at (916) 322-3385. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC prior to adoption, amendment or repeal of these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listservs/dtsc> and subscribe to the applicable Listserv. You may also leave a message for Jeff Woled at (916) 322-5225 or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to:

Jeff Woled Regulations  
Coordinator  
Regulations Section  
Department of Toxic Substances  
Control

Mailing Address: P.O. Box 806  
Sacramento, CA 95812-0806

E-mail Address: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)

Fax Number: (916) 324-1808

Jeff Woled's phone number is (916) 322-5225. If Mr. Woled is unavailable, please call Jon Cordova at (916) 327-4508.

### **TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

#### NOTICE OF PROPOSED RULEMAKING

#### **AMENDMENT TO SECTION 25705 SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK: GLYCIDOL**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to establish a specific regulatory level posing no significant risk for glycidol, and amend Title 27, California Code of Regulations, Section 25705<sup>1</sup>.

#### PUBLIC PROCEEDINGS

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA by 5:00 p.m. on **September 13, 2010**, the designated close of the written comment period.

Written comments regarding this proposed action can be sent by e-mail, mail or by fax addressed to:

Monet Vela  
Office of Environmental Health Hazard Assessment  
Proposition 65 Implementation Program  
P.O. Box 4010  
Sacramento, California 95812-4010  
FAX: (916) 324-1786  
Telephone: (916) 323-2517  
[mvela@oehha.ca.gov](mailto:mvela@oehha.ca.gov)

<sup>1</sup> All further regulatory references are to Title 27 of the California Code of Regulations unless otherwise indicated.



Comments sent by courier should be delivered to:

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 19<sup>th</sup> Floor  
Sacramento, California 95814

It is requested but not required that written statements or arguments be submitted in triplicate.

A public hearing to present oral comments will be scheduled only if one is requested. The request must be submitted in writing no later than 15 days before the close of the comment period on September 13, 2010. The written request must be sent to OEHHA at the address listed below no later than **August 27, 2010**. A notice for the public hearing, if one is requested, will be mailed to interested parties who are on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days in advance of the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Monet Vela at (916) 323-2517 or [mvela@oehha.ca.gov](mailto:mvela@oehha.ca.gov) at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

## CONTACT

Please direct inquiries concerning the substance and processing of the action described in this notice to Monet Vela, in writing at the address given above, or by telephone at (916) 323-2517. Ms. Susan Luong is a back-up contact person for inquiries concerning processing of this action and is available at (916) 445-6900.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq. and commonly known as Proposition 65 (hereinafter Proposition 65 or the Act), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the State to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual (Health and Safety Code section 25249.6). The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water (Health and Safety Code section 25249.5).

For chemicals known to the state to cause cancer, an exemption from the warning requirement is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which the person is responsible produces no significant risk or that a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water (Health and Safety Code sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (sections 25701-25721). Section 25701 describes alternative methods for making such a determination. Section 25705 sets forth the process by which OEHHA may identify specific regulatory levels for determining "no significant risk" for purposes of Proposition 65.

Details on the basis for the proposed level are provided in the reference cited below, which is incorporated in the rulemaking record. The reference is a risk assessment document prepared by OEHHA describing and summarizing the derivation of the regulatory level listed below.

This amendment to section 25705(b) would adopt the following No Significant Risk Level (NSRL) for one chemical listed as known to cause cancer:

Chemical	NSRL, in units micrograms per day	Reference
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Glycidol	0.54	OEHHA (2010)
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The risk assessment which was used by the Office of Environmental Health Hazard Assessment to determine the stated level is as follows:

Office of Environmental Health Hazard Assessment (OEHHA, 2010). No Significant Risk Level (NSRL) for the Proposition 65 Carcinogen Glycidol. OEHHA, Reproductive and Cancer Hazard Assessment Branch, California Environmental Protection Agency, Oakland, July 2010.

## AUTHORITY

Health and Safety Code Section 25249.12.

## REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

## IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not pose a mandate on local agencies or

school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

#### **COSTS OR SAVINGS TO STATE AGENCIES**

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

#### **EFFECT ON FEDERAL FUNDING TO THE STATE**

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

#### **EFFECT ON HOUSING COSTS**

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

#### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE**

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### **IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES**

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

#### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **EFFECT ON SMALL BUSINESSES**

OEHHA has determined that the proposed regulation will not impose any requirements on small business.

Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

#### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA or that has otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based, and the text of the regulation. A copy of the Initial Statement of Reasons, a copy of the text of the regulation and a copy of the risk assessment which was used by OEHHA to determine the NSRL are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such changes. Copies of the notice and the changed regulation will also be available at the OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

#### **FINAL STATEMENT OF REASONS**

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The Final Statement of Reasons will also be available at the OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

## TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

### NOTICE OF PROPOSED RULEMAKING

#### AMENDMENT TO SECTION 25705 SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK: 2,4,6-TRINITROTOLUENE

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to establish a specific regulatory level posing no significant risk for 2,4,6-Trinitrotoluene, and amend Title 27, California Code of Regulations, Section 25705<sup>1</sup>.

### PUBLIC PROCEEDINGS

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA by 5:00 p.m. on **September 13, 2010**, the designated close of the written comment period.

Written comments regarding this proposed action can be sent by e-mail, mail or by fax addressed to:

Monet Vela  
Office of Environmental Health Hazard Assessment  
Proposition 65 Implementation Program  
P.O. Box 4010  
Sacramento, California 95812-4010  
FAX: (916) 324-1786  
Telephone: (916) 323-2517  
[mvela@oehha.ca.gov](mailto:mvela@oehha.ca.gov)

Comments sent by courier should be delivered to:

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 19<sup>th</sup> Floor  
Sacramento, California 95814

It is requested but not required that written statements or arguments be submitted in triplicate.

A public hearing to present oral comments will be scheduled only if one is requested. The request must be submitted in writing no later than 15 days before the close of the comment period on September 13, 2010. The written request must be sent to OEHHA at the address listed below no later than **August 30, 2010**. A no-

tice for the public hearing, if one is requested, will be mailed to interested parties who are on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days in advance of the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Monet Vela at (916) 323-2517 or [mvela@oehha.ca.gov](mailto:mvela@oehha.ca.gov) at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

### CONTACT

Please direct inquiries concerning the substance and processing of the action described in this notice to Monet Vela, in writing at the address given above, or by telephone at (916) 323-2517. Ms. Susan Luong is a back-up contact person for inquiries concerning processing of this action and is available at (916) 445-6900.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq. and commonly known as Proposition 65 (hereinafter Proposition 65 or the Act), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the State to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual (Health and Safety Code section 25249.6). The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water (Health and Safety Code section 25249.5).

For chemicals known to the state to cause cancer, an exemption from the warning requirement is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which the person is responsible produces no significant risk or that a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water (Health and Safety Code sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (sections 25701-25721). Section 25701 describes alternative methods for making such a deter-

<sup>1</sup> All further regulatory references are to Title 27 of the California Code of Regulations unless otherwise indicated.

mination. Section 25705 sets forth the process by which OEHHA may identify specific regulatory levels for determining “no significant risk” for purposes of Proposition 65.

Details on the basis for the proposed level are provided in the reference cited below, which is incorporated in the rulemaking record. The reference is a risk assessment document prepared by OEHHA describing and summarizing the derivation of the regulatory level listed below.

This amendment to section 25705(b) would adopt the following No Significant Risk Level (NSRL) for one chemical listed as known to cause cancer:

Chemical	NSRL, in units micrograms per day	Reference
2,4,6–Trinitrotoluene	8.2	OEHHA (2010)

The risk assessment which was used by the Office of Environmental Health Hazard Assessment to determine the stated level is as follows:

Office of Environmental Health Hazard Assessment (OEHHA, 2010). No Significant Risk Level (NSRL) for the Proposition 65 Carcinogen 2,4,6–Trinitrotoluene. OEHHA, Reproductive and Cancer Hazard Assessment Branch, California Environmental Protection Agency, Oakland, July 2010.

#### AUTHORITY

Health and Safety Code Section 25249.12.

#### REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not pose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

#### COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

#### EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation will not impose any requirements on small business. Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA or that has



otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based, and the text of the regulation. A copy of the Initial Statement of Reasons, a copy of the text of the regulation and a copy of the risk assessment which was used by OEHHA to determine the NSRL are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such changes. Copies of the notice and the changed regulation will also be available at the OEHHA's Web site at [www.oehha.ca.gov](http://www.oehha.ca.gov).

#### FINAL STATEMENT OF REASONS

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### GENERAL PUBLIC INTEREST

#### DEPARTMENT OF FISH AND GAME

#### CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NO. 2080-2010-024-03

**Project:** Airfield Neighborhood Park Project

**Location:** Sonoma County

**Applicant:** City of Santa Rosa

#### Background

The City of Santa Rosa (Applicant) proposes to construct the Airfield Neighborhood Park on 2.87 acres located south of North Point Parkway, west of Fresno Avenue and north of Maitland Avenue, and to develop the Fresno Avenue Preserve (Preserve) on 3.70 acres located approximately 1,300 feet south of the Airfield Neighborhood Park (Project). The Airfield Neighborhood Park will contain picnic tables, grassy areas, a basketball court (half court) and childrens' play equipment. Proposed construction activities include removal of petroleum hydrocarbon-affected soil at the Project site. The contaminated soil will be hauled to a designated landfill according to the Soil Management Plan and Excavation Work Plan prepared for the park site in conjunction with the City of Santa Rosa Fire Department and the Regional Water Quality Control Board. The Applicant will preserve and enhance the upland habitat of the Preserve by removing stockpiled soil, re-contouring the site to native grade, and re-vegetating the site with native grassland species. The Applicant will also install two amphibian movement tunnels under Fresno Avenue in order to connect the Federal Emergency Management Agency (FEMA)/Broadmoor North Preserve breeding ponds east of Fresno Avenue to the Preserve and install curbs to prevent California tiger salamander (*Ambystoma californiense*) from accessing nearby streets.

The Project activities described above are expected to incidentally take California tiger salamander where those activities would occur within the proposed Airfield Neighborhood Park and the Fresno Avenue Preserve. In particular, incidental take of California tiger salamander could occur as a result of being crushed and/or entombed in burrows. Construction of the Preserve will also result in the temporary loss of 3.70 acres of upland California tiger salamander habitat. In addition, Project construction will result in the permanent loss of

2.87 acres of upland California tiger salamander habitat. The Sonoma County Distinct Population Segment of the California tiger salamander is listed as an endangered species under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.).

California tiger salamander are currently protected as candidate species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). On March 3, 2010, the California Fish and Game Commission, the constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing California tiger salamander as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2); see also Cal. Reg. Notice Register 2010, No. 23–Z, p. 855.) Consistent with the Commission’s determination, California tiger salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, § 2075.5(2); Cal. Code Regs., tit. 14, §§ 670.1, subd. (j), 670.5, subd. (b); Cal. Reg. Notice Register 2010, No. 12–Z, p. 425.) In the interim, California tiger salamander will remain a candidate species protected under CESA. (Fish & G. Code, §§ 2080, 2085; Cal. Reg. Notice Register 2009, No. 8–Z, p. 284.)

California tiger salamander are documented as present within 1.3 miles of the Project, and there is suitable California tiger salamander habitat within and adjacent to the Project site. Because of suitable habitat on the Project site, the close proximity of documented occurrences, and the species’ dispersal patterns, the U.S. Fish and Wildlife Service (Service) determined the California tiger salamander are reasonably certain to occur within the Project area and that Project activities are expected to result in the incidental take of the species.

Because the Project is expected to result in the incidental take of California tiger salamander, a species listed under the ESA, the U.S. Environmental Protection Agency (EPA) consulted with the Service as required by the ESA. On June 8, 2010, the Service issued a biological opinion (Service file No. 81420–2009–F–0343) (BO) to the EPA. The BO describes the Project actions, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The BO also requires the Applicant to implement and adhere to measures contained within the final Fresno Avenue Mitigation Corridor Preserve Habitat, Mitigation, Monitoring, and Management Plan.

Because California tiger salamander is also a protected species pursuant to CESA, on June 21, 2010, the Applicant notified the Director of the Department of

Fish and Game (DFG) that the City of Santa Rosa was requesting a determination, pursuant to Fish and Game Code section 2080.1, that the BO and its related ITS are consistent with CESA for purposes of the Project.

### **Determination**

DFG has determined that the BO, including the ITS, is consistent with CESA as to the Project because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of species protected by CESA. Specifically, DFG finds that: take of California tiger salamander will be incidental to an otherwise lawful activity; the mitigation measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take; funding is adequate to ensure successful implementation of the identified mitigation measures, including funding for compliance and effectiveness monitoring; and construction of the Project will not jeopardize the continued existence of California tiger salamander. The mitigation measures in the BO and ITS include, but are not limited to, the following:

### **Minimization, Mitigation, and Monitoring Measures**

- Applicant will provide mitigation for Project impacts by placing a conservation easement on the 3.70-acre Fresno Avenue Preserve site to preserve California tiger salamander upland habitat. The Applicant will obtain review and approval of the final conservation easement by the Service and DFG prior to the initiation of any ground-breaking activities on the Project. The final conservation easement will be executed no later than concurrent with the initiation of ground-breaking activities on the Project and recorded within six months after ground-breaking activities have been initiated.
- The Applicant will obtain review and approval of the final Fresno Avenue Migration Corridor Preserve Habitat Mitigation, Monitoring and Management Plan by the Service and DFG prior to the initiation of ground-breaking activities on the two Projects.
- Clearing and grading of the Project sites will occur between April 15 and October 15 of any given year.
- A Service and DFG approved biologist will be the only personnel allowed to handle California tiger salamanders. If a California tiger salamander is observed within the Project site by a worker, the worker will immediately inform the monitor, who will then notify the biologist immediately. All work will halt and machinery will be turned off within 100 feet of the animal until the biologist can capture and remove the California tiger salamander from the work area. Any California

tiger salamander found in the work area will be relocated to pre-approved areas no more than one hour after they are captured.

#### Financial Assurances

- Prior to the initiation of any ground-breaking activities at either of the two Project sites, the Applicant will secure funding assurances for the full amounts of the land management endowment and the conservation easement monitoring endowment through an Irrevocable Letter of Credit or other legally-binding mechanism. The Applicant will obtain approval by the Service and DFG of the amount and form of the endowment and funding assurance prior to executing the funding assurance mechanism. Even if a funding assurance is provided, the land management endowment and the conservation easement monitoring endowment will be fully funded no later than six months after ground-breaking activities have been initiated. Alternatively, the Applicant may fully fund both endowments prior to initiation of Project Activities.

#### Take Avoidance Measures

- The Applicant will provide a biological monitoring staff (a biologist and monitor) approved by the Service and DFG to implement the conservation measures terms and conditions. The Service and DFG approved biologist will be responsible for appropriate training of the monitor. The monitor will be present at all times when work is in progress.
- The monitor and biologist will have the authority to halt work activities at any time to prevent harming California tiger salamanders or when conservation measures have been violated.
- Before the start of work each morning, the monitor will check for California tiger salamanders under any equipment such as vehicles and stored pipes. The monitor will also check all excavated steep-walled holes or trenches greater than one foot deep.
- Plastic mono-filament netting (erosion control matting) or similar material will not be used on the two project sites because California tiger salamanders may become entangled or trapped in it. Acceptable substitutes include coconut coir matting or tackified hydroseeding compounds.

#### Notification and Reporting

- A record of all California tiger salamanders observed and the outcome of that observation will be kept by the biologist and submitted to the Service and DFG.

- DFG requests that annual reports required by the Fresno Avenue Migration Corridor Preserve Habitat Mitigation, Monitoring and Management Plan be submitted to DFG.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of California tiger salamander for the Project, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITS. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS, the Applicant will be required to obtain a new consistency determination or a CESA incidental take permit from DFG. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c).)

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice

For Publication July 30, 2010  
CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
American Basin Fish Screen and Habitat  
Improvement Project  
(2080-2010-032-02)  
Sacramento and Sutter Counties

The Department of Fish and Game (Department) received a notice on July 13, 2010 that the Natomas Mutual Water Company proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The proposed action involves consolidation of five diversions on the Sacramento River and the Natomas Cross Canal into two new fish-screened diversion facilities (Project). River water will be transported from these diversions to the system of highline and drainage canals which traverse the Natomas Basin to serve Natomas Mutual Water Company's customers. The project will be implemented in three phases.

Project activities will result in direct mortality or injury of individual giant garter snake (*Thamnophis gigas*), delta smelt (*Hypomesus transpacificus*), Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), and Central Valley spring-run Chinook salmon (*O. tshawytscha*) in the Project disturbance area. The U.S. Fish and Wildlife Service issued a "no jeopardy" federal biological opinion (81420-2008-F-1129-1) (FWS BO) and incidental



take statement to the Bureau of Reclamation on March 9, 2009 which considered the effects of the project on the Federally and State threatened giant garter snake and delta smelt. The National Marine Fisheries Service issued a “no jeopardy” federal biological opinion (2008/01096:MTM) (NMFS BO) and incidental take statement to the Bureau of Reclamation on December 29, 2008 which considered the effects of the project on the Federally and State endangered Sacramento River winter-run Chinook salmon and Federally and State threatened Central Valley spring-run Chinook salmon.

Pursuant to California Fish and Game Code Section 2080.1, the Natomas Mutual Water Company is requesting a determination that the FWS BO and NMFS BO are consistent with CESA for purposes of the proposed Project. If the Department determines the FWS BO and NMFS BO are consistent with CESA for the proposed Project, the Natomas Mutual Water Company will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

## DEPARTMENT OF FISH AND GAME

### CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NO. 2080-2010-021-03

**Project:** Sunol Valley Water Treatment Plant Expansion Project  
**Location:** 8653 Calaveras Road, Sunol, CA 94586, in an unincorporated portion of Alameda County  
**Applicant:** San Francisco Public Utilities Commission

#### Background

The San Francisco Public Utilities Commission (SFPUC) proposes to expand facilities at the Sunol Valley Water Treatment Plant as a part of the Water System Improvement Program (Project). The Project includes construction of an additional flocculation and sedimentation basin, a 17.5 million-gallon (MG) treated water reservoir, a 3.5 MG chlorine contact tank, associated water treatment facilities, new onsite pipelines, and a new 78-inch connector pipeline to the existing pipeline located along Calaveras Road. The new pipeline will be installed under Alameda Creek using conventional tunneling methods (trenchless) and no impacts will occur to the bed, bank, channel, or riparian vegetation within the stream zone. The tunnel will be approximately 520 feet long and the top of the pipeline will be approximately 40 feet below the creek channel bottom at the shallowest point.

The activities described above are expected to result in incidental take of California tiger salamander (*Ambystoma californiense*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*). In particular, California tiger salamander and Alameda whipsnake could be incidentally taken as a result of being crushed by project related equipment or vehicles, construction debris, worker foot traffic, and individuals in burrows could be injured or killed by trenching and other construction activities. California tiger salamander and Alameda whipsnake could also be taken as a result of being trapped in trenches, pits, or erosion control materials, and could be affected by increased noise, vibration, and potential changes in water quality.

Alameda whipsnake is listed as a threatened species under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). California tiger salamander is listed as a threatened species under the ESA and on March 3, 2010, the California Fish and Game Commission, the California constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing California tiger salamander as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2).) Consistent with the Commission’s determination, California tiger salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rule-making by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, 2075.5(2); Cal. Code Regs., tit. 14, 670.1, subd. (j), 670.5, subd. (b).) In the interim, California tiger salamander will remain a candidate species protected under CESA. (Fish & G. Code, 2085; Cal. Reg. Notice Register 2009, No. 8-Z, p. 284.)

The presence of California tiger salamander and Alameda whipsnake has been documented within the vicinity of the Project area and there is suitable habitat for these species within the Project area. Because of the proximity of documented observations, dispersal patterns, and the presence of suitable California tiger salamander and Alameda whipsnake habitat within the Project area, the U.S. Fish and Wildlife Service (Service) determined California tiger salamander and Alameda whipsnake are reasonably certain to occur within the Project area and are expected to be incidentally taken as a result of Project activities. The Project will result in the permanent loss of 5.5 acres and temporary loss of 16.3 acres of California tiger salamander and Alameda whipsnake upland dispersal habitat. 21 acres adjacent to the Project area that is currently in use as a plant nursery will also be temporarily impacted from the placement of spoils, however it is not considered to be high



quality habitat for California tiger salamander and Alameda whipsnake.

Because the Project has the potential to take a species listed under the ESA, the U.S. Army Corps of Engineers (ACOE), on behalf of SFPUC, consulted with the Service as required by the ESA. On June 3, 2010, the Service issued a Biological Opinion (Ref. No. 81420-2009-F-1063-1)(BO) and incidental take statement (ITS) to ACOE. The BO describes the Project, including conservation measures developed to minimize impacts to California tiger salamander and Alameda whipsnake, and sets forth measures to mitigate remaining impacts to California tiger salamander, Alameda whipsnake, and their habitat.

Because California tiger salamander and Alameda whipsnake are also protected species pursuant to CESA, on June 7, 2010, Cheryl L. Davis of SFPUC, notified the Director of the Department of Fish and Game (DFG) that SFPUC was requesting a determination pursuant to section 2080.1 of the Fish and Game Code that the BO and its ITS are consistent with CESA for purposes of the Project.

#### **Determination**

DFG has determined that the BO, including its ITS, is consistent with CESA as to the Project because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds that the take of California tiger salamander and Alameda whipsnake will be incidental to an otherwise lawful activity, the mitigation measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take, and completion of the Project will not jeopardize the continued existence of California tiger salamander or Alameda whipsnake. The mitigation measures in the BO and ITS include, but are not limited to, the following:

#### **Minimization, Mitigation, and Avoidance Measures**

- The SFPUC will compensate for the permanent loss of 5.5 acres of upland dispersal habitat and the temporary loss of 16.3 acres of upland dispersal habitat by permanently preserving 34.4 acres (3:1 ratio for permanent impacts and 1.1:1 ratio for temporary impacts) of Habitat Management Lands (HM Lands) or by purchasing 34.4 acres of California tiger salamander and Alameda whipsnake upland habitat conservation credits at a DFG and Service approved habitat conservation bank. Compensation will be provided before initiating Project activities or within 18 months of initiating Project activities if SFPUC provides a financial security to DFG.

- The SFPUC will restore on-site the 16.3 acres of habitat for Alameda whipsnake and California tiger salamander that will be temporarily disturbed from Project activities to pre-project or better conditions as outlined in the BO. Security will be provided to DFG for completion of restoration activities.
- Nineteen acres used for placement of spoils will be stabilized and re-seeded following completion of the Project. Trees will be re-planted on the nineteen acres to replace those removed by the Project.
- Preconstruction surveys will be conducted in the Project area for California tiger salamander and Alameda whipsnake. Small mammal burrow areas will be temporarily fenced and avoided to the extent feasible. At locations where small mammal burrows are identified and cannot be avoided, burrows will be examined with a burrow scope. Small mammal burrows that are clear of California tiger salamander and Alameda whipsnake will be excavated and collapsed prior to construction. If the end of a burrow cannot be reached to confirm it is empty, an opening will be left so that any undetected animals do not become trapped. If a burrow is occupied, the individual animal will be relocated by a Service and DFG-approved biologist. The above surveys will be conducted prior to installation of exclusion fence to ensure that no animals have been trapped within the fence.
- The SFPUC or its contractors will install temporary exclusion fencing along the work area boundaries (including access roads, staging areas, etc.) where suitable habitat is present. The exclusion fence will consist of a DFG approved material. The fence will be a minimum of 42 inches tall and the bottom 6 inches will be buried to prevent listed species from crawling under the fence. Stakes/posts will be placed on the inside of the fence to prevent Alameda whipsnake from using the stakes/posts to enter the Project area. In addition the fence will include one-way funnels to allow listed species to escape if they become trapped within the work site. All fencing will be inspected and maintained for the duration of Project activities.
- A Service and DFG-approved biologist will be present to monitor the Project area for Alameda whipsnake and California tiger salamander at the beginning of each workday (before work begins), during initial ground disturbance (including grading, excavation, and vegetation removal activities), during initial spoils deposition, and

during rain events. A rain event is defined to occur if there is a 30 percent or greater chance of rain. During a rain event, the Service and DFG-approved biologist will be on-site during and for three days after the rain.

- The Service and DFG-approved biologist will oversee the implementation of all conservation and minimization measures outlined in the BO, and will have the authority to stop Project activities if any requirements of the BO are not being met.
- If a listed species is found within the construction work limits, all work nearby shall cease and an escape route shall be provided to the listed species so that it can leave the work area on its own volition. If providing an escape route is not possible or successful, the Service and DFG-approved Biologist shall be contacted to relocate the listed species outside of the work area. If the Service and DFG-approved Biologist is unable to relocate the listed species outside of the work area, the Service and DFG-approved Biologist shall consult the Service and DFG immediately for instruction on the appropriate actions to take.
- Biological resource awareness training will be required for all Project personnel.

#### Reporting Requirements

- The Service and DFG must be notified within one working day of the finding of any injured or dead Alameda whipsnake or California tiger salamander. Injured Alameda whipsnakes or California tiger salamanders must be cared for by a licensed veterinarian or other person approved by the Service and DFG.

#### Financial Assurances

- SFPUC will provide a financial security in an amount up to \$750,000 for mitigation activities that have not been completed prior to initiation of Project activities. The financial security will be provided prior to initiation of Project activities, and DFG may draw on the principal sum if DFG, at its sole discretion, determines that SFPUC has failed to comply with the BO.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of Alameda whipsnake and California tiger salamander for the Project, provided SFPUC implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITS. If there are any substantive changes to the Project, including changes to

the mitigation measures, or if the Service amends or replaces the BO and ITS, the Applicant will be required to obtain a new consistency determination or a CESA incidental take permit from DFG (see generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)).

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice

For Publication July 20, 2010

#### CESA CONSISTENCY DETERMINATION REQUEST FOR

Sonoma County Water Agency's 2010 Projects Plan  
(2080-2010-029-03)  
Sonoma County

The Department of Fish and Game (Department) received a notice on July 7, 2010 that the Sonoma County Water Agency proposes to rely on a consultation with a federal agency to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The proposed action involves six localized sediment removal projects, two reach-scale sediment removal projects, and four bank stabilization and repair projects planned for 2010 (Project). The Project also includes clearing of sediment from six sediment basin structures.

Project activities will result in the temporary loss of 0.157 acres of habitat for the California tiger salamander (*Ambystoma californiense*) and the potential for temporary loss of Burke's goldfields (*Lasthenia burkei*), Sonoma sunshine (*Blennosperma bakeri*), and Sebastopol meadowfoam (*Limnanthes vinculans*) habitat. The Project could result in direct mortality or injury of individual California tiger salamanders, Burke's goldfields, Sonoma sunshine, and Sebastopol meadowfoam in the Project disturbance area. The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal programmatic biological opinion (81420-2009-F-0788-1)(Programmatic BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers for the Sonoma County Stream Maintenance Program on October 29, 2009 which considered the effects of the project on various Federally and State listed species. The Service issued a letter appending the Project to the Programmatic BO which considers the effects of the Project on the Federally threatened and State candidate California tiger salamander, and the Federally and State endangered Burke's goldfields, Sonoma sunshine, and Sebastopol meadowfoam.

On March 3, 2010, the California Fish and Game Commission, the California constitutionally established entity with exclusive statutory authority to desig-

nate species as protected under CESA, determined that listing California tiger salamander as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2).) Consistent with the Commission's determination, California tiger salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, 2075.5(2); Cal. Code Regs., tit. 14, 670.1, subd. (j), 670.5, subd. (b).) In the interim, California tiger salamander will remain a candidate species protected under CESA. (Fish & G. Code, 2085; Cal. Reg. Notice Register 2009, No. 8-Z, p. 284.)

Pursuant to California Fish and Game Code Section 2080.1, Sonoma County Water Agency is requesting a determination that the append letter to the Programmatic BO is consistent with CESA for purposes of the proposed Project. If the Department determines the append letter to the Programmatic BO is consistent with CESA for the proposed Project, Sonoma County Water Agency will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

## DEPARTMENT OF FISH AND GAME

### CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NO. 2080-2010-019-03

**Project:** Line 131 Natural Gas Replacement Project at Cowell Ranch

**Location:** Northwest of Marsh Creek Road on Cowell Ranch State Park lands and within the Vineyards housing development, west of the City of Brentwood

**Applicant:** Pacific Gas and Electric Company (PG&E)

#### Background

Pacific Gas and Electric Company (PG&E) proposes to replace approximately 1,400 linear feet of a natural gas pipeline, Line 131, on State Department of Parks and Recreation (State Parks) lands and within a previously-graded residential housing development site, "The Vineyards." The proposed action will upgrade the safety standards of the existing gas pipeline to accommodate recent and planned development in the area. The new pipeline will be the same size—24 inches in diameter—as the old pipeline.

Installation of the new pipeline will be completed using horizontal directional drilling (HDD). Two primary boring locations will be used, one in a grazing field approximately 600 feet southwest of the John Marsh house and one within the disturbed residential construction site to the north of Marsh Creek. The HDD will be completed parallel to the existing Line 131 pipe and within an existing PG&E easement. The length of the bore will be approximately 1,325 feet with a minimum of 25 feet of clearance under the creek bed.

Equipment needed for the HDD operation will be located next to each of the boring sites in a staging area. The staging area will be covered with steel plates or a similar material to protect the ground surface. The construction office, materials storage, fabrication and testing facilities, and parking will be located at the Vineyards housing development site. Access to the northern bore site will be from existing construction roads in the Vineyards development. Access to the southern bore site will be via a Contra Costa County Flood Control and Water Conservation District access road along the Old Marsh Creek Road and then along the PG&E easement.

The old pipeline will be left in place, except for the exposed portion of pipe spanning Marsh Creek. To remove the pipe that is currently spanning Marsh Creek, a crew will access the pipe on the south side of the creek outside of the riparian corridor, excavate the bank and cut the pipeline, fill the cut ends of the pipe with grout, and bury the remaining ends of the pipe.

Construction is expected to take approximately 4 to 5 months to complete, including site preparation, earthwork, pipe removal, and revegetation. The HDD activities, including earthwork, boring, and pipe installation, will take approximately two months. Following construction, all equipment and materials will be removed and excavated areas will be graded smooth and seeded with appropriate vegetation.

The activities described above are expected to incidentally take California tiger salamander (*Ambystoma californiense*). In particular, California tiger salamander could be incidentally taken as a result of crushing or smothering of individuals from excavations, operation of heavy equipment, dumping of dredge spoils, and worker foot traffic. Construction of the Project will also result in the temporary loss of 0.74 acre of habitat suitable for California tiger salamander, of which 0.016 acre will be affected by excavation.

California tiger salamander is listed as an endangered species under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). On March 3, 2010, the California Fish and Game Commission, the California constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing California tiger sala-



mander as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2).) Consistent with the Commission's determination, California tiger salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, 2075.5(2); Cal. Code Regs., tit. 14, 670.1, subd. (j), 670.5, subd. (b).) In the interim, California tiger salamander will remain a candidate species protected under CESA. (Fish & G. Code, 2085; Cal. Reg. Notice Register 2009, No. 8–Z, p. 284.)

Because the Project has the potential to take a species listed under the ESA, the U.S. Army Corps of Engineers (Corps) consulted with the Service as required by the ESA. On May 6, 2008, the Service issued a biological opinion (Service File No. 81420–2008–F–0947; BO) to the Corps. The BO describes the Project actions, requires PG&E to comply with terms of the BO and its incidental take statement, and incorporates additional measures. On June 16, 2010 the BO was amended to require PG&E to provide for the permanent conservation and management of California tiger salamander habitat, and provide a performance security to the Department of Fish and Game (DFG) (81420–2008–F–0947–R001).

Because California tiger salamander is a protected species under CESA, on June 8, 2010, Brandon Liddell of PG&E notified the Director of DFG that PG&E was requesting a determination, pursuant to Fish and Game Code section 2080.1, that the BO and its related incidental take statement (ITS) are consistent with CESA for purposes of the Project.

San Joaquin kit fox (*Vulpes macrotis mutica*), a species listed as endangered under the ESA, and threatened under CESA, is known to occur within the project area. However, DFG has determined that take of this species, as defined in section 86 of the Fish and Game Code, will not occur as a result of Project implementation, provided PG&E implements the Project as described in the BO, including adherence to all avoidance measures related to San Joaquin kit fox contained therein. This consistency determination does not provide incidental take coverage for San Joaquin kit fox, and no take of San Joaquin kit fox, as defined in section 86 of the Fish and Game Code, is permitted.

#### Determination

DFG has determined that the amended BO, including the ITS, is consistent with CESA in regards to the Project because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species.

Specifically, DFG finds that: take of California tiger salamander will be incidental to an otherwise lawful activity; the mitigation measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take; and construction of the Project will not jeopardize the continued existence of California tiger salamander. The mitigation measures in the BO and ITS, as amended, include, but are not limited to, the following:

#### General Take Avoidance and Minimization Measures

1. A qualified biologist will provide all employees in the work area with a worker awareness program before any ground disturbing activities within the work area begin. "Employees" includes all PG&E employees, consultants, contractors and construction crew personnel. This program will be used to describe the California tiger salamander, its habitats, legal status and required protection and all applicable mitigation measures.
2. At least 15 days prior to the onset of activities, PG&E shall submit the name(s) and credentials of designated biologists who will conduct surveys and ensure compliance with the take avoidance and minimization measures. No project activities shall begin until PG&E has received written approval from the Service that the biologist(s) is qualified to conduct work.
3. A Service-approved biologist shall survey the work site area two weeks before the onset of activities.
4. When a qualified biologist is not present at the work area, PG&E will designate a person to monitor onsite compliance with all conservation/minimization/avoidance measures during construction. A Service-approved biologist will ensure that this individual receives training in the identification of California tiger salamander. The monitor and the Service-approved biologist will have the authority to halt any action that might result in the death, injury or harassment of California tiger salamander. If work is stopped, the Service will be notified immediately by the approved biologist or onsite biological monitor.
5. Work activities shall be completed between April 1 and November 1. Should PG&E demonstrate a need to conduct activities outside this period, the Corps may authorize such activities after obtaining the Service's approval.
6. PG&E will return the work area to its pre-existing contour; evaluate, and revegetate the Project site with an appropriate assemblage of native riparian



and upland vegetation suitable for the area, at the direction of a qualified botanist.

7. To prevent accidental entrapment of California tiger salamander during construction, escape ramps will be installed at the direction of the biological monitor at all excavated holes and trenches. Trenches will be inspected by the biological monitor prior to work starting each day. Before holes are filled they will be thoroughly inspected for trapped animals. In the event of a trapped animal, ramps or other types of structures will be installed immediately to allow the animal to escape. The Service will be notified in the event a special-status species is identified.

#### Mitigation Measures

- PG&E will, by December 16, 2011, acquire, conserve, manage, and fund 0.75 acre of occupied California tiger salamander habitat or 0.75 acre of California tiger salamander credits at a bank, all subject to DFG and Service approval.

#### Financial Assurances

- If PG&E proceeds with project impacts in 2010 prior to providing the California tiger salamander habitat, PG&E will provide an irrevocable letter of credit to DFG prior to project impacts in 2010, with language approved by DFG, in the amount of \$15,000 to secure this obligation.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of California tiger salamander for the Project, provided PG&E implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS, PG&E will be required to obtain a new consistency determination or a CESA incidental take permit from DFG [see generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)].

## DEPARTMENT OF FISH AND GAME

### CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NO. 2080-2010-022-02

**Project:** Burson Rehabilitation Project  
**Location:** Calaveras County  
**Applicant:** California Department of Transportation

#### Background

The California Department of Transportation (Caltrans) proposes to rehabilitate and widen a 6.9 mile section of State Route 12 (SR12) in western Calaveras County between the communities of Wallace and Valley Springs (Project). The Project area consists of the 6.9 mile linear segment of SR12 and associated 1.7 acres of right-of-way, as well as additional right-of-way acquired at the Pettinger Road intersection. The purpose of the Project is to improve traffic safety by rehabilitating road conditions to meet current safety standards. The Project includes placement of a 2.36 inch rubberized asphalt concrete (AC) overlay over the existing roadway for the entire length of the Project; realignment and widening of the intersection at Pettinger Road; correction and adjustment of curves; and replacement or rebuilding of headwalls, AC dikes, culverts, and guardrails.

The activities described above are expected to incidentally take California tiger salamander (*Ambystoma californiense*) in the federally designated Central Valley Distinct Population Segment where they may be found in or near Project construction zones, including the roadway, shoulders, and right-of-way of SR12 along the portion of SR12 that stretches from 2 miles east of Wallace to 0.2 miles east of the SR12/SR26 junction in Valley Springs. The Project area contains upland habitat consisting of annual grasslands and oak woodlands suitable for California tiger salamander. The upland habitat is also in relatively close proximity to known California tiger salamander breeding habitat. California Natural Diversity Database files contain nine records of California tiger salamander occurrences within the Wallace and Valley Springs 7.5 minute quad sheets. Also three sightings of California tiger salamander in a settling pond adjacent to the Project area were made in January, 2001. Because of the suitable habitat present on the Project site, the close proximity of documented occurrences, and the species' dispersal patterns, the U.S. Fish and Wildlife Service (Service) determined that the California tiger salamander is reasonably certain to occur within the Project area and that Project activities are expected to result in the incidental take of the species. The Service determined, in particular, that incidental take of California tiger salamander is expected to occur as a result of Project related vegetation removal, excavation, grading, earth moving, soil compacting, equipment storage, access logistics, paving, and other construction activities. The Service also determined that the Project is most likely to affect California tiger salamander by crushing or entombing the species as a result of heavy equipment or other vehicles used in Project construction. Additionally, California tiger salamander may be exposed to in-

creased predation or vehicle traffic as they attempt to leave the Project area as a result of Project disturbance.

The California tiger salamander is listed as a threatened species under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). The California tiger salamander is also a protected candidate species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). On March 3, 2010, the California Fish and Game Commission, the constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing California tiger salamander as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2); see also Cal. Reg. Notice Register 2010, No. 23-Z, p. 855.) Consistent with the Commission's determination, California tiger salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, § 2075.5(2); Cal. Code Regs., tit. 14, §§ 670.1, subd. (j), 670.5, subd. (b); Cal. Reg. Notice Register 2010, No. 12-Z, p. 425.) In the interim, California tiger salamander will remain a candidate species protected under CESA. (Fish & G. Code, §§ 2080, 2085; Cal. Reg. Notice Register 2009, No. 8-Z, p. 284.)

Construction of the Project is expected to result in direct mortality of the California tiger salamander, as described above, and the permanent loss of 1.7 acres of upland habitat for the California tiger salamander. Because the Project is expected to result in the incidental take of California tiger salamander, a species listed under the ESA, Caltrans consulted with the Service as required by the ESA. On August 20, 2009, the Service issued a biological opinion for the Project to Caltrans (Service file No. 81420-2009-F-0710-1) (hereafter, the BO). The BO describes the Project, requires Caltrans to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The BO also requires Caltrans to implement and adhere to measures contained within the Project Biological Assessment (BA).

Because the California tiger salamander is also a protected species pursuant to CESA, on June 16, 2010, Caltrans notified the Director of the Department of Fish and Game (DFG) that Caltrans was requesting a determination, pursuant to Fish and Game Code Section 2080.1, that the BO and its related ITS are consistent with CESA for purposes of the Project.

#### Determination

DFG has determined that the BO, including the ITS, is consistent with CESA as to the Project because the

mitigation measures contained in the BO and ITS, as well as the conditions in the BA, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of species protected under CESA. Specifically, DFG finds that: take of California tiger salamander will be incidental to an otherwise lawful activity; the mitigation measures identified in the BO, ITS, and BA will minimize and fully mitigate the impacts of the authorized take; and construction of the Project will not jeopardize the continued existence of California tiger salamander. The mitigation measures in the BO and ITS include, but are not limited to, the following:

#### Minimization, Mitigation and Monitoring Measures

1. Caltrans will implement best management practices during construction. Equipment parking, parking access, supply logistics, equipment maintenance, and other Project related activities will occur in a designated staging area(s) which will be pre-approved by a Service-approved Caltrans biologist. At no time will equipment or personnel be allowed to adversely affect habitat areas outside the Project site without authorization from the Service. All Project related traffic will be restricted to established roads and other designated areas.
2. A qualified biologist will be on site or on call during all Project activities that could result in the take of California tiger salamander. The qualifications of the biologist will be presented to the Service for review and approval at least 60 days prior to any ground breaking activities at the Project area. The biologist will be given the authority to stop any work that may result in the take of California tiger salamander. If the biologist exercises this authority, the Service and DFG will be notified by telephone and electronic mail within one working day. The Service contact is the Deputy Assistant Field Supervisor, Endangered Species Program at the Sacramento Fish and Wildlife Office at telephone number (916) 414-6600. DFG will be contacted by emailing the Regional Manager of DFG's North Central Region, Kent Smith, at ksmith@dfg.ca.gov and by telephoning Caltip at (888) 334-2258.
3. Limits of the construction area will be flagged, if not already marked by right-of-way or other fencing, and all activities will be confined within the marked area.
4. Two areas where California tiger salamander were observed in 1983 and 2001 shall be declared Environmentally Sensitive Areas. Pavement

markings shall delineate the location of these areas.

5. Nighttime construction will be minimized as much as possible. In addition, nighttime construction will be restricted from areas of suitable upland habitat bisected by SR12. Namely, the segment of SR12 where California tiger salamanders were sighted in January 2001, and the segment of SR12 at the 1983 occurrence record location (Bear Creek crossing). No night work shall be performed in these areas between 8 p.m. and 7 a.m.
6. To mitigate the Project's direct effects to the California tiger salamander and to mitigate the permanent loss of 1.7 acres of upland habitat, Caltrans has purchased 5.1 credits (3:1 compensation ratio) at the Fitzgerald Ranch Conservation Bank.

#### Take Avoidance Measures

1. A Service approved biologist will conduct pre-construction surveys for California tiger salamanders throughout the Project area within two days of the beginning of Project construction. Surveys will abide by Service guidelines and recommendations and any pertinent areas shall be enclosed with environmentally sensitive area fencing to provide protection against Project related disturbance.
2. Construction within 1 kilometer (0.6 miles) of potential California tiger salamander breeding habitat will be timed to occur during the dry season (June to October), when larvae and breeding adults are not present.

#### Notification and Reporting

1. Consistent with the BO, contractors or employees who, during routine operations and maintenance activities, inadvertently kill or injure a California tiger salamander must immediately report the incident to their representative. The representative must then immediately contact DFG.
2. A post-construction monitoring report detailing the Project's compliance with Project design criteria will be provided to the Service. Although not a requirement of the BO, DFG requests that Caltrans provide a copy of the report to DFG.

Pursuant to Fish and Game Code section 2080.1, because the Project BO and ITS are consistent with CESA, authorization for incidental take of California tiger salamander under CESA is not required provided Caltrans implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO, ITS, and BA. If there

are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO or ITS, Caltrans will be required to obtain a new consistency determination or a CESA incidental take permit from DFG. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c).)

## DEPARTMENT OF FISH AND GAME

### Department of Fish and Game — Public Interest Notice

For Publication July 30, 2010  
CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
Alton Parkway Extension and Baker Ranch  
Community Development Project  
(2080-2010-031-05)  
Orange County

The Department of Fish and Game (Department) received a notice on July 13, 2010 that Orange County and Shea/Baker Ranch Associates, LLC propose to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves a general plan amendment that will allow development of approximately 2,100 residential units, 320,000 square feet of retail and commercial uses, parks, trails, and infrastructure on approximately 380 acres, a 2.1 mile extension of a six-lane divided roadway, a bypass channel for storm flows, habitat restoration, and construction of a Wildlife Corridor (Project).

Project activities will result in the permanent loss of a total of 11.94 acres of habitat for least Bell's vireo (*Vireo bellii pusillus*). The Project could result in direct mortality or injury of individual least Bell's vireos in the Project disturbance area. The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (FWS-OR-10B0011-08F0868) (BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on July 6, 2010 which considered the effects of the project on the Federally and State endangered least Bell's vireo.

Pursuant to California Fish and Game Code Section 2080.1, Orange County and Shea/Baker Ranch Associates, LLC are requesting a determination that the BO is consistent with CESA for purposes of the proposed Project. If the Department determines the BO is consistent with CESA for the proposed Project, Orange County and Shea/Baker Ranch Associates, LLC will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.



**AIR RESOURCES BOARD**

**NOTICE OF POSTPONEMENT**

**NOTICE OF PUBLIC HEARING TO  
CONSIDER ADOPTION OF A PROPOSED  
REGULATION FOR A CALIFORNIA  
RENEWABLE ELECTRICITY STANDARD**

BY NOTICE dated June 2, 2010, and published in the June 4, 2010, California Notice Register, Register 2010, No. 23–Z, the Air Resources Board (the Board or ARB) announced it would conduct a public hearing to consider the adoption of a regulation for a California Renewable Electricity Standard. That notice scheduled the public hearing for July 22, 2010 at 9:00 a.m.

PLEASE BE ADVISED that the hearing has been postponed to the following date:

DATE: **September 23, 2010**

TIME: 9:00 a.m.

PLACE: California Environmental Protection  
Agency  
Byron Sher Auditorium, Second Floor  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two–day meeting of the Board, which will commence at 9:00 a.m., September 23, 2010, and may continue at 8:30 a.m., September 24, 2010. This item may not be considered until September 24, 2010. Please consult the agenda for the meeting, which will be available at least ten days before September 23, 2010, to determine the day on which this item will be considered.

**Submittal of Comments During Postponement Period**

The record will remain open throughout the postponement period. Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action began on June 7, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after June 7, 2010, and received **no later than 12:00 noon, September 22, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources  
Board  
1001 I Street, Sacramento,  
California 95814

Electronic submittal: [http://www.arb.ca.gov/  
lispub/comm/bclist.php](http://www.arb.ca.gov/lispub/comm/bclist.php)

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability–related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322–5594 or by facsimile at (916) 322–3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia
- Documentos disponibles en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322–5594 o envíe un fax a (916) 322–3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audien-



cia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

## PROPOSITION 65

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

#### CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

#### NOTICE TO INTERESTED PARTIES

July 30, 2010

#### Availability of Hazard Identification Materials for Methyl Isocyanate and Sulfur Dioxide and Announcement of the October 20 and 21, 2010 Developmental and Reproductive Toxicant Identification Committee Meeting

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986<sup>1</sup> (Proposition 65). The Developmental and Reproductive Toxicant Identification Committee (DARTIC) advises and assists OEHHA in compiling the list of chemicals known to the State to cause reproductive toxicity as required by Health and Safety Code section 25249.8. The Committee serves as the State's qualified experts for determining whether a chemical has been clearly shown through scientifically valid testing according to generally accepted principles to cause reproductive toxicity.

Methyl isocyanate and sulfur dioxide will be considered for possible listing under Proposition 65 by the DARTIC at its next meeting scheduled for **Wednesday and Thursday, October 20 and 21, 2010**. The first day of the two-day meeting will be held at Sacramento City Hall, City Hall Chamber at 915 I Street, Sacramento,

California. Wednesday's meeting will begin at 10:00 a.m. and will last until 4:00 p.m. On the second day, the meeting will be held in the Coastal Hearing Room at the Cal/EPA Headquarters building, 1001 I Street, Sacramento, California. Thursday's meeting will begin at 10:00 a.m. and will last until all business is conducted or until 5:00 p.m. The agenda for the two-day meeting will be provided in a future public notice published in advance of the meeting.

OEHHA announces the availability for public review of the documents entitled: "Evidence on the Developmental and Reproductive Toxicity of Methyl Isocyanate" and "Evidence on the Developmental and Reproductive Toxicity of Sulfur Dioxide." The DARTIC will consider these documents in making any listing decisions on these chemicals. In preparing these hazard identification materials, OEHHA considered information received from its recent request for information relevant to the evidence of reproductive toxicity of methyl isocyanate and sulfur dioxide. The data call-in period for methyl isocyanate opened on June 27, 2008, and closed on August 26, 2008. The data call-in period for sulfur dioxide opened on January 18, 2008, and closed on March 18, 2008.

Copies of the documents are available from OEHHA's web site at the following address: <http://www.oehha.ca.gov/prop65.html>. The documents may also be requested from OEHHA's Proposition 65 Implementation Office by calling (916) 445-6900.

This notice marks the beginning of a 60-day public comment period on these two documents. **OEHHA must receive comments and any supporting documentation by 5:00 p.m. on Tuesday, September 28, 2010.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [coshita@oehha.ca.gov](mailto:coshita@oehha.ca.gov). Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

Mailing Address: Ms. Cynthia Oshita  
Office of Environmental Health  
Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, California  
95812-4010  
Fax: (916) 323-8803  
Street Address: 1001 I Street  
Sacramento, California  
95814

OEHHA will organize and index the comments received and forward the information to the DARTIC members prior to the meeting at which the chemicals will be considered.

<sup>1</sup> Health and Safety Code section 25249.5 et seq.

## SUMMARY OF REGULATORY ACTIONS

### REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010-0603-02

#### AIR RESOURCES BOARD

##### In-Use Off-Road Diesel Fueled Fleets

This regulatory action deals with In-Use Off-Road Diesel-Fueled Fleets.

Title 13

California Code of Regulations

AMEND: 2449, 2449.1, 2449.2

Filed 07/16/2010

Effective 08/15/2010

Agency Contact: Amy Whiting (916) 322-6533

File# 2010-0611-01

#### BOARD OF EQUALIZATION

##### Audit Procedures

In this regulatory action, the Board of Equalization adopts a new regulation setting forth "Audit Procedures" for taxpayer audits under the Sales and Use Tax Law.

Title 18

California Code of Regulations

ADOPT: 1698.5

Filed 07/19/2010

Effective 08/18/2010

Agency Contact:

Richard Bennion (916) 445-2130

File# 2010-0624-02

#### BOARD OF GUIDE DOGS FOR THE BLIND

##### Annual School Renewal Payment; Instruction Period

The Board of Guide Dogs for the Blind (Board) submitted this timely certificate of compliance action to make permanent title 16, California Code of Regulations, sections 2262 and 2262.1, which were adopted in OAL file no. 2010-0211-02E, and to amend title 16, California Code of Regulations, section 2276. This action adopts new annual renewal fees to be paid by schools licensed by the Board, revises due dates for re-

newal payments, as specified, pursuant to board authority added to the Business & Professions Code sec. 7200.7 in SB 475 (ch. 51, Stats.2009), and further defines the standards to be followed by both schools and instructors licensed by the Board.

Title 16

California Code of Regulations

ADOPT: 2262.1 AMEND: 2262, 2276

Filed 07/21/2010

Effective 08/20/2010

Agency Contact:

Antonette Sorrick (916) 574-7825

File# 2010-0616-03

#### BOARD OF OPTOMETRY

##### Repeal CCR section 1569 Scope of Practice

In this regulatory action the Board of Optometry repeals the "Scope of Practice" regulation in Section 1569 of Title 16 of the California Code of Regulations because the regulation duplicates Business and Professions Code section 3041.

Title 16

California Code of Regulations

REPEAL: 1569

Filed 07/21/2010

Effective 08/20/2010

Agency Contact: Andrea Leiva (916) 575-7182

File# 2010-0713-01

#### DEPARTMENT OF FOOD AND AGRICULTURE

##### European Grapevine Moth Interior Quarantine

The Department of Food and Agriculture amended section 3437 in title 3 of the California Code of Regulations to expand the interior quarantine area in Sonoma County for European Grapevine Moth.

Title 3

California Code of Regulations

AMEND: 3437

Filed 07/20/2010

Effective 07/20/2010

Agency Contact: Susan McCarthy (916) 654-1017

File# 2010-0706-04

#### DEPARTMENT OF FOOD AND AGRICULTURE

##### Light Brown Apple Moth Interior Quarantine

The Department of Food & Agriculture (DFA) submitted this emergency action to amend title 3, California Code of Regulations, section 3434 by adding or changing quarantine areas for the Light Brown Apple Moth (LBAM), *Epiphyas postvittana*, in several counties due to recent LBAM detections in new areas of Alameda, Contra Costa, Los Angeles, Monterey, San Benito, San Joaquin, Santa Clara, Solano and Sonoma counties. A portion of the existing contiguous quarantine

area in the counties of Alameda, Contra Costa, Monterey, Santa Clara, Solano and Sonoma counties has been expanded by approximately 229 square miles and designated as a regulated area. A new quarantine area of approximately 25 square miles is established for the Ryer Island area of Solano and Sacramento counties. The Long Beach quarantine area of Los Angeles County has been expanded by approximately 10 square miles. The Manteca quarantine area of San Joaquin County has been expanded by approximately 13 square miles. The effect of this change to the regulation is to establish authority for the State to perform quarantine activities against LBAM in these additional quarantine areas. The result of this action is to put approximately 5,020 square miles under regulation for the LBAM within the state.

Title 3  
California Code of Regulations  
AMEND: 3434(b) and (c)  
Filed 07/16/2010  
Effective 07/16/2010  
Agency Contact:  
Stephen S. Brown (916) 654-1017

File# 2010-0617-02  
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
**Income Limits**

This regulatory action is the annual update of income limits for households of varying sizes. The regulation was transmitted to the OAL for filing with the Secretary of State and publication in the California Code of Regulations pursuant to Health & Safety Code section 50093. This filing is exempt from the rulemaking requirements of articles 5 and 6 of chapter 3.5 of the Administrative Procedure Act, and thus, is not subject to OAL's review. (HSC sec. 50093(c).) This regulation is effective upon filing with OAL. (HSC sec. 50093(c).)

Title 25  
California Code of Regulations  
ADOPT: 6932 REPEAL: 6932  
Filed 07/19/2010  
Effective 06/17/2010  
Agency Contact: Lenora Frazier (916) 323-4475

File# 2010-0604-01  
**DEPARTMENT OF INSURANCE**  
**Rescission of Health Insurance Policies**

This rulemaking adopts 9 new sections in Title 10 of the California Code of Regulations. These new sections establish standards for ensuring questions on applications for health insurance are clear and unambiguous. They also set forth requirements for pre-issuance medi-

cal underwriting and the attestation required by agents assisting applicants. Finally, these new sections establish requirements for the conduct of post-issuance rescission investigations.

Title 10  
California Code of Regulations  
ADOPT: 2274.70, 2274.71, 2274.72, 2274.73, 2274.74, 2274.75, 2274.76, 2274.77, 2274.78  
Filed 07/19/2010  
Effective 08/18/2010  
Agency Contact: Andrea Rosen (916) 492-3508

File# 2010-0709-02  
**FISH AND GAME COMMISSION**  
**Stewarts Point SMR and Stewarts Point SMCA**

This emergency regulatory action establishes the Stewarts Point State Marine Conservation Area (SMCA). The general boundaries of the SMCA will be from the mean high tide line to a line that approximates a distance of 1000 feet offshore, and from the northern boundary of the existing Stewarts Point State Marine Reserve to just below Rocky Point, approximately four miles south. All commercial take of living marine resources is prohibited. The recreational take from shore of marine aquatic plants other than sea palm, marine invertebrates, finfish by hook and line, surf smelt by beach net, and species authorized in Section 28.80 (including surf smelt) by hand-held dip net will be authorized consistent with other applicable law. The SMCA would leave three miles of coastline in State Marine Reserve status, which meets the minimum science guidelines for coastal protection of nearshore habitats.

Title 14  
California Code of Regulations  
AMEND: 632  
Filed 07/19/2010  
Effective 07/19/2010  
Agency Contact:  
Sherrie Fonbuena (916) 654-9866

File# 2010-0607-02  
**FISH AND GAME COMMISSION**  
**List California Tiger Salamander as a Threatened Species**

The Department of Fish and Game amended Title 14, section 670.5 of the California Code of Regulations to add the California tiger salamander to the list of threatened species under the California Endangered Species Act.

Title 14  
California Code of Regulations  
AMEND: 670.5  
Filed 07/20/2010

Effective 08/19/2010

Agency Contact: Sheri Tiemann (916) 654-9872

File# 2010-0716-01

**OFFICE OF REAL ESTATE APPRAISERS**

Appraisal Management Company Registration (SB 237)

This regulatory action is to implement SB 237 (Chapter 173, Statutes of 2009) which requires Appraisal Management Companies, effective January 1, 2010, to register with the Office of Real Estate Appraisers (OREA) in order to administer appraisals connected to California property.

**Title 10**

California Code of Regulations

ADOPT: 3575, 3576, 3577 AMEND: 3500, 3522, 3523, 3524, 3526, 3527, 3528, 3529, 3530, 3582, 3681, 3702, 3703, 3721, 3724, 3726, 3728, 3731, 3741

Filed 07/21/2010

Effective 07/21/2010

Agency Contact:

Kathleen Chovan (916) 341-6126

File# 2010-0625-01

**OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

Inpatient Expected Source of Payment Data Element

This change without regulatory effect updates the Expected Source of Payment (ESOP) data element by adding codes for two new licensed plans, deletes codes for eight plans no longer licensed, and repeals two expired subsections.

**Title 22**

California Code of Regulations

AMEND: 97232

Filed 07/21/2010

Agency Contact: Irene Ogbonna (916) 326-3937

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN February 17, 2010 TO  
July 21, 2010**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

07/08/10 AMEND: 18313.5(c)  
07/06/10 AMEND: 51000  
07/01/10 AMEND: 1859.90.1  
06/24/10 ADOPT: 1859.90.1 AMEND: 1859.90.1  
renumbered as 1859.90.2, 1859.129,  
1859.197  
06/24/10 AMEND: 47000, 47001, 47002  
06/23/10 AMEND: 1859.184  
06/17/10 AMEND: 18703.3  
06/17/10 ADOPT: 18313.5  
06/09/10 AMEND: Div. 8, Ch. 64, Sec. 55300  
05/25/10 AMEND: div. 8, ch. 65, sec. 55400  
05/11/10 AMEND: 18945  
05/06/10 AMEND: 1859.2  
05/03/10 AMEND: 60040, 60045  
04/21/10 AMEND: 1859.96, 1859.148.2,  
1859.166.2  
04/08/10 AMEND: 1859.76  
03/23/10 AMEND: 18351  
03/19/10 ADOPT: 59670  
03/19/10 AMEND: 18942 REPEAL: 18630  
03/11/10 AMEND: 18932.4  
02/24/10 AMEND: 1859.2, 1859.41, Form SAB  
50-01, Form SAB 50-02  
02/23/10 AMEND: div. 8, ch. 16, sec. 37000  
02/19/10 AMEND: 52400

**Title 3**

07/20/10 AMEND: 3437  
07/16/10 AMEND: 3434(b) and (c)  
07/13/10 AMEND: 3591.20(a)  
07/07/10 ADOPT: 3591.24  
07/01/10 AMEND: 3437  
06/30/10 AMEND: 3423(b)  
06/18/10 AMEND: 6448, 6448.1, 6449, 6449.1,  
6450, 6450.1, 6450.2, 6451, 6451.1  
06/10/10 ADOPT: 429, 430 AMEND: 441  
06/10/10 ADOPT: 3024.5, 3024.6, 3024.7, and  
3024.8 AMEND: 3024, 3024.1, 3024.2,  
3024.3, 3024.4, and 4603  
06/09/10 AMEND: 3434(b), (c), (d), and (e)  
06/07/10 AMEND: 4500  
06/02/10 AMEND: 3435  
06/01/10 AMEND: 3437(b)  
05/24/10 AMEND: 3434(b)  
05/17/10 AMEND: 3591.5(a)  
05/17/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3,  
3701.4, 3701.5, 3701.6, 3701.7, 3701.8  
AMEND: 3407(e), 3407(f)  
REPEAL: 3000, 3001, 3002, 3003, 3004  
05/13/10 AMEND: 3437  
05/04/10 AMEND: 3423(b)  
05/04/10 AMEND: 3437(b)  
05/04/10 AMEND: 3434(b)  
05/03/10 AMEND: 3434(b), 3434(c) and 3434(d)



04/22/10 AMEND: 3434(b)  
 04/22/10 AMEND: 3406(b), 3406(c)  
 04/20/10 AMEND: 3437(b)  
 04/15/10 AMEND: 3434(b)  
 04/05/10 AMEND: 3434(b)  
 03/24/10 ADOPT: 3436  
 03/24/10 AMEND: 3588  
 03/17/10 AMEND: 3423(b)  
 03/15/10 AMEND: 3434(b)  
 03/10/10 AMEND: 3591.20(a)  
 03/10/10 AMEND: 3434(b)  
 03/04/10 AMEND: 3700(c)  
 03/04/10 AMEND: 3406(b)  
 03/03/10 REPEAL: 3279, 3433  
 03/03/10 AMEND: 3591.20  
 03/03/10 AMEND: 3406(b)  
 03/03/10 AMEND: 3423(b)  
 03/03/10 ADOPT: 3437  
 02/26/10 AMEND: 3435  
 02/18/10 AMEND: 3591.23  
 02/18/10 ADOPT: 3591.24

**Title 4**

07/13/10 AMEND: 8034, 8035, 8042, 8043  
 07/12/10 ADOPT: 5000, 5010, 5020, 5021, 5030, 5031, 5032, 5033, 5034, 5035, 5036, 5037, 5038, 5039, 5050, 5051, 5052, 5053, 5054, 5055, 5056, 5060, 5061, 5062, 5063, 5064, 5080, 5081, 5082, 5100, 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5120, 5130, 5131, 5132, 5140, 5141, 5142, 5143, 5150, 5151, 5152, 5153, 5154, 5155, 5480, 5490, 5491, 5492, 5493, 5494, 5500, 5510, 5520, 5530, 5531, 5532, 5533, 5534, 5540, and 5550  
 06/21/10 AMEND: 8070, 8072, 8073, 8074  
 06/09/10 AMEND: 1689.1  
 06/01/10 AMEND: 10020  
 05/17/10 ADOPT: 12590 REPEAL: 12590  
 04/29/10 AMEND: 8034, 8035, 8042, 8043  
 04/13/10 ADOPT: 12350, 12351, 12352, 12353, 12354, 12355 AMEND: 12008, 12335, 12340, 12342, 12343 renumbered as and merged with amended 12342, 12344 renumbered as and merged with amended 12345, and 12348 renumbered as 12346 REPEAL: 12347  
 04/06/10 ADOPT: 12372, 12395, 12396 AMEND: 12370  
 03/29/10 AMEND: 1685  
 03/29/10 AMEND: 1632  
 03/25/10 AMEND: 10175, 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10185, 10187, 10188, 10190

03/15/10 ADOPT: 12482

**Title 5**

06/09/10 AMEND: 19824, 19851, 19854  
 05/27/10 ADOPT: 80048.8, 80048.8.1, 80048.9, 80048.9.1, 80048.9.2, 80048.9.3 AMEND: 800.46.5, 80047, 80047.1, 80047.2, 80047.3, 80047.4, 80047.5, 80047.6, 80047.7, 80047.8, 80047.9, 80048.3, 80048.4, 80048.6 REPEAL: 80048.2  
 05/20/10 ADOPT: 30730, 30731, 30732, 30733, 30734, 30735, 30736  
 04/15/10 AMEND: 19816, 19816.1  
 04/12/10 REPEAL: 40503  
 04/12/10 AMEND: 42002  
 02/26/10 AMEND: 19824, 19851, 19854

**Title 7**

06/21/10 AMEND: 202 REPEAL: 212

**Title 8**

07/13/10 AMEND: 9789.70  
 07/01/10 AMEND: 4650, 4797, 4823  
 06/30/10 AMEND: 10232.1, 10232.2, 10250.1  
 06/30/10 ADOPT: 17300  
 06/29/10 ADOPT: 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, 16464 AMEND: 16421, 16423, 16427, 16428, 16431, 16433, 16500  
 06/21/10 AMEND: 344.30  
 06/02/10 AMEND: 1590  
 05/25/10 AMEND: 1599  
 05/05/10 AMEND: 3308  
 04/06/10 AMEND: 2305.2, 2340.16, 2360.3, 2405.4, 2534.8  
 03/24/10 AMEND: 4301  
 03/10/10 AMEND: 6070, 6074, 6075, 6080, 6085, 6087, 6089, 6090, 6100, 6115, 6120, Article 154, Appendix A, Appendix B

**Title 9**

07/07/10 ADOPT: 1850.350(a), 1850.350(b), 1850.350(c) AMEND: 1810.203.5(d)  
 07/07/10 ADOPT: 1850.350(a), 1850.350(b), 1850.350(c) AMEND: 1810.203.5(d)  
 05/07/10 REPEAL: 3520  
 04/28/10 ADOPT: 4350  
 04/20/10 ADOPT: 10700, 10701 AMEND: 10518, 10529 REPEAL: 10532, 10533

**Title 10**

07/21/10 ADOPT: 3575, 3576, 3577 AMEND: 3500, 3522, 3523, 3524, 3526, 3527, 3528, 3529, 3530, 3582, 3681, 3702, 3703, 3721, 3724, 3726, 3728, 3731, 3741

07/19/10 ADOPT: 2274.70, 2274.71, 2274.72, 2274.73, 2274.74, 2274.75, 2274.76, 2274.77, 2274.78

07/12/10 AMEND: 2698.600, 2698.602

07/01/10 AMEND: 2699.200, 2699.201

06/29/10 ADOPT: 2756, 2758.1, 2758.2, 2758.3, 2758.4, 2758.5, 2758.6, 2758.7, 2945.1, 2945.2, 2945.3, 2945.4 AMEND: 2750, 2911

06/24/10 AMEND: 2699.6500, 2699.6700, 2699.6707, 2699.6721

06/09/10 AMEND: 2699.6600, 2699.6607, 2699.6619, 2699.6621, 2699.6705, 2699.6715, 2699.6725

06/01/10 AMEND: 2498.6

05/26/10 AMEND: 2699.6809

05/19/10 ADOPT: 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5507

05/04/10 AMEND: 2699.6625

04/28/10 AMEND: 2318.6

04/28/10 AMEND: 2318.6, 2353.1, 2354

04/28/10 AMEND: 2353.1

04/21/10 AMEND: 2699.202

04/21/10 AMEND: 2699.202

04/13/10 ADOPT: 2031.1, 2031.2, 2031.3, 2031.4, 2031.5, 2031.6, 2031.7, 2031.8, 2031.9, 2031.10

04/12/10 AMEND: 2690

04/06/10 ADOPT: 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, 2850.6, 2850.7, 2850.8, 2850.9, 2850.10

04/01/10 ADOPT: 1409.1, 1414, 1422.4, 1422.4.1, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, 1422.7, 1422.7.1, 1422.9, 1422.10, 1422.11, 1422.12, 1424, 1437, 1950.122.2.1, 1950.122.4, 1950.122.4.1, 1950.122, 1950.122.5, 1950.122.5.1, 1950.122.5.2, 1950.122.5.3, 1950.122.5.4, 1950.122.6, 1950.122.7, 1950.122.8, 1950.122.9, 1950.122.10, 1950.122.11, 1950.122.12, 1950.205.1, 1950.209, 1950.307 AMEND: 1404, 1409, 1411, 1430.5, 1431, 1433, 1436, 1454, 1550, 1552, 1557, 1950.003, 1950.122.2, 1950.123, 1950.204.3, 1950.204.4, 1950.301, 1950.314.8, 1950.316, 1950.317 REPEAL: 1950.122

03/29/10 AMEND: 2202, 2203

03/18/10 ADOPT: 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5507

02/23/10 ADOPT: 2756, 2758.1, 2758.2, 2758.3, 2758.4, 2758.5, 2758.6, 2758.7, 2945.1, 2945.2, 2945.3, 2945.4 AMEND: 2750, 2911

02/23/10 ADOPT: 2187, 2187.1, 2187.3, 2187.6, 2188.2.5, 2188.5.5, 2188.50(a), 2188.50(b), 2188.50(c), 2188.50(e), 2188.50(h) AMEND: 2186, 2186.1, 2187 (renumbered to 2187.3), 2187.1 (renumbered to 2187.2), 2187.2 (renumbered to 2187.7), 2187.3 (renumbered to 2187.4), 2187.4 (renumbered to 2187.5), 2188, 2188.1, 2188.2, 2188.3, 2188.4, 2188.5, 2188.23 (renumbered to 2188.50(d)), 2188.24 (renumbered to 2188.50(f)), 2188.83 (renumbered to 2188.50(g))

**Title 11**

06/09/10 AMEND: 1005, 1018

06/09/10 AMEND: 1005, 1007, 1008

05/19/10 AMEND: 20

04/21/10 AMEND: 1084

03/30/10 AMEND: 1084

**Title 13**

07/16/10 AMEND: 2449, 2449.1, 2449.2

07/08/10 AMEND: 1141(b)

06/14/10 AMEND: 440.04

06/14/10 AMEND: 345.24, 345.40, 345.41, 345.46, 345.50 REPEAL: 345.42

06/07/10 AMEND: 152.00, 190.03

05/18/10 ADOPT: 1971.5 AMEND: 1968.2, 1971.1

04/27/10 AMEND: 1160.3, 1160.4

04/13/10 AMEND: 1201, 1212, 1213

04/05/10 ADOPT: 2408.1 AMEND: 2401, 2403, 2404, 2405, 2406, 2408, 2409

04/01/10 AMEND: 1961, 1961.1

04/01/10 AMEND: 1961, 1961.1

03/25/10 AMEND: 2480

03/04/10 ADOPT: 205.00, 205.02, 205.04, 205.06, 205.08, 205.10, 205.12, 205.14

03/03/10 AMEND: 423.00

02/22/10 AMEND: 350.36, 350.38, 350.40, 350.44, 350.46

**Title 14**

07/20/10 AMEND: 670.5

07/19/10 AMEND: 632

07/12/10 AMEND: 7.50

06/24/10 AMEND: 360, 361, 362, 363, 364, 555, 708, 713

06/23/10 AMEND: 919.9, 939.9

05/26/10 AMEND: 7.50

05/03/10 AMEND: 820.01

04/30/10 AMEND: 27.80

04/27/10 AMEND: 632

04/20/10 AMEND: 895.1, 914.6, 934.6, 954.6, 1024, 1025, 1026, 1030, 1052, 1052.1, 1052.4, 1092, 1092.01, 1092.09, 1092.29

03/29/10 ADOPT: 18452.1 AMEND: 18449, 18450, 18451, 18453, 18453.2, 18454, 18455, 18456, 18456.1, 18456.2, 18456.3, 18456.4, 18457, 18459, 18459.1, 18459.1.2, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18461, 18462, 18463, 18464, 18466, 18831  
REPEAL: 18456.2.1, 18460.2.1

03/10/10 AMEND: 670.5

02/23/10 AMEND: 1052(a)

02/18/10 AMEND: 155

**Title 15**

07/13/10 ADOPT: 3505 AMEND: 3000, 3075.2, 3075.3, 3502, 3504

07/02/10 ADOPT: 8000, 8001, 8002

05/25/10 AMEND: 3170.1(g), 3173.2(d)

05/25/10 AMEND: 3090, 3091, 3093, 3095

04/26/10 ADOPT: 3720, 3721, 3721.1, 3722, 3723

02/24/10 AMEND: 7001

**Title 16**

07/21/10 REPEAL: 1569

07/21/10 ADOPT: 2262.1 AMEND: 2262, 2276

07/09/10 AMEND: 3000, 3003, 3005, 3065  
REPEAL: 3006

07/09/10 AMEND: 411

07/09/10 AMEND: 3340.42

07/07/10 AMEND: 3028, 3061

06/30/10 AMEND: 1355.4

06/21/10 ADOPT: 1525, 1525.1, 1525.2

06/18/10 ADOPT: 39, 40, 41, 42, 43, 44, 45, 46, 48, 48.1, 48.2, 48.3, 48.5, 48.6

06/07/10 ADOPT: 1702

06/03/10 AMEND: 4180

05/27/10 AMEND: 314

05/20/10 AMEND: 1996.3, 1997

05/19/10 AMEND: 3340.1

05/13/10 ADOPT: 1399.615, 1399.616, 1399.617, 1399.618, 1399.619 AMEND: 1399.571

05/04/10 ADOPT: 4175

04/27/10 AMEND: 1399.152, 1399.153.3, 1399.160.3, 1399.160.4

04/12/10 ADOPT: 3340.36.1

03/29/10 ADOPT: 1355.4

03/16/10 ADOPT: 311.1

03/09/10 AMEND: 1016, 1017 REPEAL: 1016.1, 1017.1

03/08/10 AMEND: 4100

02/24/10 AMEND: 4120

02/22/10 ADOPT: 2262.1 AMEND: 2262

02/18/10 ADOPT: 50.1

**Title 17**

06/29/10 AMEND: 100070, 100090

06/17/10 ADOPT: 95460, 95461, 95462, 95463, 95464, 95465, 95466, 95467, 95468, 95469, 95470, 95471, 95472, 95473, 95474, 95475, 95476, Appendix 1

06/17/10 ADOPT: 95200, 95201, 95202, 95203, 95204, 95205, 95206, 95207 AMEND: 95104

04/15/10 AMEND: 95480.1, 95481, 95486

04/07/10 AMEND: 1031.2, 1031.3

**Title 18**

07/19/10 ADOPT: 1698.5

06/17/10 AMEND: 25136

05/18/10 ADOPT: 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903

05/13/10 AMEND: 1584

05/13/10 AMEND: 1602.5, 1700

05/11/10 REPEAL: 1525.7

04/14/10 AMEND: 192, 193, 371

03/30/10 ADOPT: 3500 AMEND: 2300, 2401, 3502, 4041, 4500, 4508, 4701, 4702, 4703, 4901

03/19/10 ADOPT: 25101.3 AMEND: 25137-7

03/17/10 AMEND: 1699

03/16/10 AMEND: 312(a)

03/16/10 AMEND: 1597

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07/13/10 AMEND: 2729.7 and Appendix B of Article 4

06/17/10 ADOPT: 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067

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05/12/10 AMEND: Title 19: 2402, 2407, 2411, 2413, 2415, 2425, 2443, 2444, 2450, 2501, 2510, 2520, 2530, 2540, 2570.2, 2571, 2573.1, 2573.2, 2573.3, 2575.1, 2575.2, 2576, 2576.1, 2577.2, 2577.3, 2577.5, 2577.6, 2577.7, 2577.8, 2578.1, 2578.2, 2578.3, 2703, 2705, 2724, 2729.2, 2731, 2735.1, 2735.3, 2735.4, 2735.5, 2745.1, 2745.10, 2750.2, 2750.3, 2765.2, 2775.6, 2780.1, 2780.2, 2780.3, 2780.4, 2780.6, 2780.7, 2800, 2810, 2815, 2820, 2825, 2830, 2835, 2850, 2855, 2900, 2910, 2915, 2925, 2930, 2940, 2945, 2955, 2965, 2966, 2970, 2980, 2990, Title 26: 19-2510, 19-2520, 19-2530, 19-2540, 19-2703, 19-2705, 19-2724, 19-2731

**Title 20**

07/08/10 AMEND: 2401, 2402, Appendix,  
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**Title 21**

06/02/10 AMEND: 1411.1, 1411.7

**Title 22**

07/21/10 AMEND: 97232  
06/24/10 AMEND: 51510, 51510.1, 51510.2,  
51510.3, 51511, 51511.5, 51511.6,  
51535, 51535.1, 51544, 54501  
06/22/10 AMEND: 2706-7  
06/17/10 AMEND: 51516.1  
05/25/10 AMEND: 66262.44  
05/19/10 AMEND: 100159, 100166, 100171  
05/18/10 ADOPT: 100102.1, 100103.1, 100103.2,  
100106.1, 100106.2, 100107.1 AMEND:  
100101, 100102, 100103, 100104,  
100105, 100106, 100107, 100108,  
100109, 100110, 100111, 100112,  
100113, 100114, 100115, 100116,  
100117, 100118, 100119, 100120,  
100121, 100122, 100123, 100124,  
100125, 100126, 100127, 100128,  
100129, 100130  
05/18/10 ADOPT: 100059.1, 100061.2 AMEND:  
100057, 100058, 100059, 100059.2,  
100060, 100061, 100061.1, 100062,  
100063, 100063.1, 100064, 100064.1,  
100065, 100066, 100067, 100068,  
100069, 100070, 100071, 100072,  
100073, 100074, 100075, 100076,  
100077, 100078, 100079, 100080,  
100081, 100082, 100083  
05/18/10 ADOPT: 100340, 100341, 100342,  
100343, 100343.1, 100343.2, 100343.3,  
100344, 100345, 100346, 100346.1,  
100347, 100348, 100349  
05/18/10 ADOPT: 100202.1, 100206.1, 100206.2,  
100206.3, 100206.4, 100208.1,  
100211.1, 100214.1, 100214.2, 100214.3  
AMEND: 100201, 100202, 100203,  
100204, 100205, 100206, 100207,  
100208, 100209, 100210, 100211,  
100212, 100213, 100214, 100215,  
100216, 100217 REPEAL: 100218  
05/12/10 ADOPT: 5300, 5400 AMEND: 5002,  
5010, 5052, 5055, 5062, 5102, 5105  
05/12/10 AMEND: 11-425, 22-001, 22-003,  
22-009, 45-302, 45-303, 45-304,  
45-305, 45-306  
05/06/10 AMEND: 66273.36  
04/08/10 AMEND: 50778  
04/05/10 AMEND: 4446.5

03/03/10 AMEND: 70055, 70577, 70703, 70706,  
70707, 70717, 70749, 70751, 70753,  
71053, 71203, 71205, 71503, 71507,  
71517, 71545, 71551, 71553, 72091,  
72109, 72303, 72311, 72315, 72319,  
72337, 72413, 72423, 72433, 72453,  
72461, 72471, 72515, 72523, 72525,  
72528, 72543, 72547, 73077, 73089,  
73301, 73303, 73311, 73313, 73315,  
73325, 73329, 73399, 73409, 73449,  
73469, 73479, 73489, 73517, 73519,  
73523, 73524, 73543, 73547, 79315,  
79351, 79637, 79689

02/24/10 ADOPT: 97177.10, 97177.15, 97177.20,  
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97177.45, 97177.50, 97177.55,  
97177.60, 97177.65, 97177.67,  
97177.70, 97177.75, 97199.50, 97200  
AMEND: 97170, 97172, 97174, 97176,  
97178, 97180, 97182, 97184, 97186,  
97188, 97190, 97192, 97194  
(renumbered as 97199), 97196, 97198

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07/09/10 ADOPT: 87606 AMEND: 87202, 87208,  
87212, 87455, 87633  
03/04/10 ADOPT: 89475.1, 89475.2 AMEND:  
89200, 89201, 89202, 89205, 89206,  
89207, 89218, 89219, 89219.1, 89219.2,  
89224, 89226, 89227, 89228, 89229,  
89231, 89234, 89235, 89240, 89242,  
89244, 89246, 89252, 89254, 89255,  
89255.1, 89256, 89286, 89317, 89318,  
89319, 89323, 89361, 89370, 89372,  
89373, 89374, 89376, 89377, 89378,  
89379, 89387, 89387.1 renumbered as  
89387(h), 89387.2, 89388, 89400,  
89405, 89410, 89420, 89421, 89465,  
89468, 89469, 89475, 89510.1, 89510.2,  
89565.1, 89566, 89569.1, 89572.2,  
89587.1 REPEAL: 89245, 89261,  
89570.1

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07/19/10 ADOPT: 6932 REPEAL: 6932  
07/12/10 ADOPT: 3929.3  
07/12/10 ADOPT: 3919.8  
05/20/10 ADOPT: 2910 REPEAL: 2910  
03/10/10 AMEND: 3005  
03/04/10 ADOPT: 2631.2  
02/25/10 ADOPT: 3919.6  
02/24/10 ADOPT: 3919.7  
02/22/10 ADOPT: 2631.2



**Title 25**

07/19/10 ADOPT: 6932 REPEAL: 6932  
 06/11/10 AMEND: 8315  
 05/25/10 AMEND: 7966, 7970  
 03/26/10 AMEND: 10001  
 02/25/10 ADOPT: 6200, 6201, 6202, 6203

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07/13/10 AMEND: 25705(b)  
 04/09/10 ADOPT: 22100, 22101, 22103, Division  
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 21200, 21570, 21640, 21685, 21820,  
 21840, 21865, 21880, 22102, 22211,  
 22220, 22221, 22231, 22234, 22245,  
 22248, Division 2 Appendix 3, Division 2

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 Calrecycle 106  
 03/10/10 AMEND: 25903

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06/10/10 AMEND: 42-302, 42-712, 42-713  
 06/02/10 AMEND: 19-005  
 05/17/10 ADOPT: 31-021 AMEND: 31-003,  
 31-410, 31-501  
 05/17/10 AMEND: 44-211  
 05/10/10 AMEND: 11-425, 22-001, 22-003,  
 22-009, 45-302, 45-303, 45-304,  
 45-305, 45-306  
 02/26/10 ADOPT: 31-021 AMEND: 31-003,  
 31-410, 31-501

